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REVIEW OF U.S. CUSTOMS SERVICE OPERATIONS

HEARINGS

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

ONE HUNDREDTH CONGRESS

SECOND SESSION

JUNE 9; AUGUST 9; AND SEPTEMBER 27, 1988

Serial 100-89

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REVIEW OF U.S. CUSTOMS SERVICE OPERATIONS

THURSDAY, JUNE 9, 1988

House of Representatives,
Committee on Ways and Means,
Subcommittee on Oversight,
Washington, DC.

The subcommittee met, pursuant to notice, at 11 a.m., in room 1100, Longworth House Office Building, Hon. J.J. Pickle (chairman of the subcommittee) presiding.

[The press release announcing the hearing follows:]

FOR IMMEDIATE RELEASE
FRIDAY, JUNE 3, 1988

PRESS RELEASE #20
SUBCOMMITTEE ON OVERSIGHT
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
1105 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, D. C. 20515
TELEPHONE: (202) 225-5522

THE HONORABLE J. J. PICKLE (D., TEXAS), CHAIRMAN, SUBCOMMITTEE ON OVERSIGHT, COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES, ANNOUNCES HEARINGS TO REVIEW THE U.S. CUSTOMS SERVICE

The Honorable J. J. Pickle (D., Texas), Chairman of the Subcommittee on Oversight, Committee on Ways and Means, U.S. House of Representatives, announced today that the Subcommittee will conduct a series of investigative hearings to review the overall operations and activities of the U.S. Customs Service. The first hearing is scheduled for Thursday, June 9, 1988, beginning at 11:00 a.m., in the main Committee hearing room, 1100 Longworth House Office Building.

The Subcommittee's hearings will focus on the impact of Customs operations on the U.S. trade community, Customs automation of commercial operations, and activities undertaken to implement various enforcement programs. The Subcommittee also will address allegations that the commercial fraud enforcement program is ineffective and has resulted in numerous cases of overzealous enforcement by Customs officials.

At the June 9, hearing, the Subcommittee will receive testimony from invited witnesses including importers, brokers, customs-law practitioners, and other members of the trade community who interact with Customs on a regular basis. In subsequent hearings, the Subcommittee intends to receive additional testimony from a broad cross-section of the trade community, including persons and organizations requesting to be heard, and from the Commissioner of the U.S. Customs Service. At the conclusion of the Subcommittee's investigation, a report will be provided to the full Committee on Ways and Means, and to the Subcommittee on Trade, for consideration and follow-up.

In announcing the hearings, Subcommittee Chairman Pickle stated: "The Subcommittee formally began its investigation last week, with a Subcommittee delegation visit to Customs facilities in the greater Miami area. The Subcommittee plans to schedule additional field visits and hearings later this year.

In the past decade, the volume of international trade involving the United States has more than doubled. During the same period, Customs staffing and resource levels have decreased. Questions continue to be raised about whether attempts by Customs to fill the gap with automated operations are successful and operate effectively and fairly.

In light of the many changes in the past decade in the area of international trade, a systematic and ongoing review of the U.S. Customs Service is long overdue. I look forward to discussing the trade community's concerns about Customs Service operations, and receiving their views on how Customs can be improved."

DETAILS FOR SUBMISSION OF REQUESTS TO BE HEARD:

Individuals and organizations interested in presenting oral testimony before the Subcommittee at subsequent hearings to be announced must submit their request to be heard no later than the close of business, Friday, June 24, 1988 by formal written request to Robert J. Leonard, Chief Counsel, Committee on Ways and Means, U. S. House of Representatives, Room 1102 Longworth House Office Building, Washington, D. C. 20515.

(MORE)

Requests should indicate the specific issues and points the witness wishes to address, in order to facilitate scheduling. It is urged that persons and organizations having a common position make every effort to designate one spokesperson to represent them in order for the Subcommittee to hear as many points of view as possible. The Subcommittee staff will notify those scheduled to appear as soon as possible after the filing deadline. Any questions concerning a scheduled appearance should be directed to the Subcommittee staff at (202) 225-5522.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Those wishing to submit written comments for the printed record of the hearing should submit six (6) copies by the close of business, on the final day of the hearings, to Robert J. Leonard, Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, room 1102 Longworth House Office Building, Washington, D. C. 20515.

FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be typed in single space on legal-size paper and may not exceed a total of 10 pages.
2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.
3. Statements must contain the name and capacity in which the witness will appear or, for written comments, the name and capacity of the person submitting the statement, as well as any clients or persons, or any organization for whom the witness appears or for whom the statement is submitted.
4. A supplemental sheet must accompany each statement listing the name, full address, a telephone number where the witness or the designated representative may be reached and a topical outline or summary of the comments and recommendations in the full statement. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press and public during the course of a public hearing, may be submitted in other forms.

Chairman PICKLE. The Chair would like to ask our guests to take their seats.

Today, the Subcommittee on Oversight begins the first in a series of hearings on the overall operations of the U.S. Customs Service. We are conducting these hearings at the request of committee Chairman Rostenkowski, and in conjunction with the Subcommittee on Trade. The subcommittee intends to continue to investigate the U.S. Customs Service on an ongoing basis, in much the same manner as the subcommittee monitors operations of the Internal Revenue Service now.

The Customs Service is the primary Government agency responsible for administration of the U.S. trade laws. Customs currently has a budget of $1 billion, and annually collects approximately $15 billion in duties and other revenues.

Throughout our investigation, we have heard from participants in the export-import industry, that operations of the Customs Service have been dramatically affected by rapid changes in the international transportation industry, by the substantial increase in the volume of trade crossing U.S. borders, and by the expanded types of goods that move through international commerce. As a result, we need to know exactly how the Customs Service is responding to this new and constantly changing trade environment. Timely and fair processing of cargo by Customs is important, if not essential, to the continued smooth flow of trade between the United States and our trading partners.

The planned series of subcommittee hearings will focus on the impact of Customs' operations on the U.S. trade community, Customs' automation of commercial operations, and activities undertaken to implement various enforcement programs. Today's testimony will primarily address the impact of Customs' operations on the U.S. trade community.

I should mention that 2 weeks ago, Congressman Schulze and I, and our staff, had an opportunity to see, firsthand, how the Customs Service processes cargo and passengers. We visited Customs' facilities in the Greater Miami area, at both the port and the airport. Clearly, we need to do more such onsite inspections of Customs' facilities. As we continue the public hearing process, this year and next, we will conduct additional site visits throughout the country.

Today, we will hear specifically from members of the importing community, including importers, brokers, customs-law practitioners, and other members of the trade community who interact with Customs on a regular basis.

We will examine the repeated claims of the trade community that the Customs Service's entry and examination processes, as well as their enforcement programs, are largely outdated or inadequate, or simply impediments to the free flow of trade. The subcommittee is particularly concerned about allegations that the commercial fraud enforcement program is ineffective, and has resulted in numerous cases of overzealous enforcement by Customs officials. In addition, we will receive testimony from several Customs Service employees who have agreed to share their views and to express their concerns about Customs' operations and their dealings with the trade community.

We are pleased to have our various witnesses here today, and before we proceed to call them to the stand, I want to ask Congressman Schulze if he has an opening statement, or comments that he would want to make.

Mr. SCHULZE. Mr. Chairman, yes, I do. I thank you. I am pleased to join with you in opening today's hearings on the U.S. Customs Service.

The role of the Customs Service has evolved over the years. Early in our nation's history, Customs personnel were referred to as "revenue agents".

This was because Customs' duties were once a major source of revenue for our nation. Customs' duties are still an important source of revenue. They will total almost $17 billion this year.

But the role of the U.S. Customs Service has expanded beyond simply collecting revenue. In today's world economy the Customs Service plays an important role in promoting the smooth flow of imports and exports.

The challenge facing the Customs Service is to administer the trade laws in a manner whereby it collects all legitimate duties and enforces all quotas and, at the same time, promotes the efficient flow of trade.

The dual obligation of enforcing the trade laws and allowing the smooth flow of trade involves striking a reasonable balance between these two goals. But the goals are not mutually exclusive. It should be possible to strike an acceptable balance.

The subcommittee is aware that some members of the trade community are critical of the commercial entry operations of the U.S. Customs Service. The constructive criticism given by today's witnesses should help identify any shortcomings in the Customs Service. Once we have identified any possible shortcomings, we will be in a better position to recommend ways to improve the situation.

In addition to broad policy questions, the subcommittee should review whether or not the Customs Service is administering the trade laws in a uniform manner.

For example, if identical goods are imported through the Port of Miami and the Port of New York, is it certain that the Customs Service will classify and treat the articles in an identical way?

There is an old saying that goes: "If you cannot be right, at least be consistent."

While some may question whether or not Customs is always correct, are they at least consistent?

Mr. Chairman, the Customs Service and the Internal Revenue service both are agencies within the Department of Treasury. There are many parallels that could be drawn between the two agencies.

I believe that our oversight of the IRS has contributed toward improving its performance. I hope that our oversight of the Customs Service will lead to a similar result.

Mr. Chairman, I look forward to receiving today's testimony.

Chairman PICKLE. Thank you, Mr. Schulze. Mr. McGrath.

Mr. MCGRATH. Mr. Chairman, thank you. I would like to thank and congratulate the chairman, and the ranking member for having these hearings.

I come from an area that is affected very much by the actions of the Customs Service, that is, an area near Kennedy Airport and the Port of New York. I have a lot of day-to-day contact with customs brokers and freight-forwarders, as well as importers and exporters. They tell about the problems they have with the adminstration of our import and export duties. I'm looking forward to these hearings and hopefully, to a solution to some of the problems that I hear about on an everyday basis.

Thank you, Mr. Chairman.

Chairman PICKLE. Thank you, Mr. McGrath.

The Chair would like to say, once more, that we are going to have a series of hearings with respect to an overview, or review, or investigation of the Customs Service. This committee has not conducted such a hearing in many a year.

Another committee has held some review of it, 1 year or 2 ago, but we hope to get into this in some depth. We are not doing it because we are trying to prosecute or persecute, but we are trying to find out how we can better handle our trade movements, both with respect to cargo and passengers. We also plan to have an indepth and rather extensive continuation of this hearing.

So this is the first in a series of hearings. This morning, the first panel we have will be composed of Mr. Richard Rivkin who is executive vice president of the Latex Glove Co.; Mr. Jerry Kobre, president of RSK Industries; and Mr. Martin Feinstein, general director of The Washington Opera.

Our first witness will be Mr. Richard Rivkin, representing Latex, and then Mr. Kobre, and then Mr. Feinstein. We are going to ask, in the interests of the time that we have, that you try to limit your remarks to at least 5 minutes.

If you would please do that, and your entire statement will be made a part of the record. First, Mr. Rivkin.

STATEMENT OF RICHARD A. RIVKIN, EXECUTIVE VICE PRESIDENT, LATEX GLOVE CO., INC.

Mr. RIVKIN. Mr. Chairman, members of the committee, I am Richard Rivkin, executive vice president of Latex Glove Co., a three generation family-owned business in Northbrook, Ill.

Our company markets all types of work gloves and related safety products to industrial buyers throughout the Nation. We purchase our products from manufacturers located in several dozen States, as well as 16 foreign countries.

Imported products account for perhaps 60 percent of our sales. Over the past few years, we have encountered an increasing number of problems with the U.S. Customs Service.

I would like to share with you what we consider to be the worst of our recent experiences. In late 1986 and early 1987, we imported lightweight cotton gloves manufactured in Swaziland, a sovereign nation totally land-locked by the Republic of South Africa.

During this time period, the United States was enforcing an embargo on virtually all imports from South Africa. Our first two shipments cleared Customs in Chicago without any problems.

We received a purchase order from a customer in southern California, and as a result, we arranged for direct shipments of these

INTENTIONAL
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gloves from Swaziland to Los Angeles. The first shipment arrived on April 29, 1987.

On May 4, our customs broker in Los Angeles filed the entry documents and duty deposit with Customs. On May 11, we received a telephone call from Ms. Celia Ridel, the import specialist in Los Angeles, requesting copies of purchase orders for the fabric shipped from Hong Kong to Swaziland together with the manufacturer's certification of production costs, factory size, number of employees and equipment.

On May 12, the requested information was sent directly by facsimile to Customs in Los Angeles. On May 13 we submitted a copy of a Swaziland certificate of origin, duly authenticated by the Swaziland Ministry of Commerce, Industry and Tourism.

On May 19, Customs in Los Angeles issued a formal notice of detention of the shipment. On May 20, we requested the assistance of the Swaziland Embassy in Washington, D.C.

On May 25, the Ministry of Commerce, Industry and Tourism in Swaziland sent a telex to their ambassador in Washington conforming the authenticity of the certificate of origin and requesting contact with Customs.

From our telephone conversations with Ms. Celia Ridel of Customs in Los Angeles, it appeared that Customs was concerned about circumvention of the South Africa embargo and needed proof of the existence of the factory in Swaziland.

Therefore, on May 26, the factory in Swaziland and our Washington attorneys arranged for a personal visit to the factory by Lee Brudvig, political, economic and commercial officer at the U.S. Embassy in Swaziland.

On May 27, we received a report from the factory that Brudvig had indeed visited the factory and promised to inform LA Customs. That same day, Ms. Ridel at Customs, inquired how workers could be trained to sew gloves in such a short period of time. We informed her that the workers were originally trained at a garment factory that had become bankrupt.

On May 28, we informed Ms. Ridel that Brudvig had visited the factory. Her reply was that consular and embassy officers often do not know what to look for at a factory visit.

On June 1, our customs broker in Los Angeles received information from Customs that all the information they required had been received and that a decision would be made in about 1 week.

More than 2 weeks later, on June 16, 1987, Customs authorized the transfer of the container to Price Warehouse for intensive examination of the merchandise. The accrued demurrage through June 16 was $1,254.50.

On June 19 the shipment was released by Customs. On March 5, 1988, Customs extended the liquidation of this entry to allow for further Customs action.

This experience with Customs in Los Angeles regarding the gloves from Swaziland leads us to conclude that some Customs officials treat all importers as adversaries, and therefore view all import transactions with suspicion.

In addition, we conclude that import trade and its effect on the domestic economy is such an emotional, highly visible political subject, that the Customs Service may well fear that any error on its part, no matter how small, may result in public criticism of U.S. Customs by Congress, from domestic industry interests, and from other agencies whose regulations Customs must enforce.

At the time our shipment arrived in Los Angeles, the embargo on South African merchandise was in full force, and we imagined that no Customs officer wanted to risk releasing merchandise, particularly textiles and apparel, which might be remotely suspected of circumventing the embargo.

However, the amount of time consumed in making the investigation was, in our opinion, both excessive and costly in terms of demurrage and other expenses incurred.

Obviously, the Customs Service has the obligation to enforce the laws of our country. However, priorities should be established, and criteria for different degrees of enforcement investigations and actions developed and implemented, so that Customs' resources—both time and money—are more effectively and efficiently applied.

Established importers with a good history of Customs transactions and cooperation do not deserve the expensive experiences such as those our company faced in Los Angeles. The cost is too great: the cost to Customs, the cost to us as importers, and the cost to the economy in general, as a result of our need to recover the nonproductive expenses imposed on us by Customs' actions. Thank you.

[The statement of Mr. Rivkin follows:]

BEFORE THE SUBCOMMITTEE ON OVERSIGHT
COMMITTEE ON WAYS AND MEANS
UNITED STATES HOUSE OF REPRESENTATIVES

STATEMENT OF RICHARD A. RIVKIN
Executive Vice President,
Latex Glove Co., Inc. - Northbrook Illinois

I. INTRODUCTION

Latex Glove Company is a 52-year-old, three generation family business engaged in the manufacture, importation, and distribution of work gloves and related products to industrial buyers throughout the country. We are a $13 million per year company in gross sales and import approximately 60% of our products. For the past 18 years, a major responsibility of mine has been the direct administration of our import purchasing program. As an indication of the extent of our international connections, we maintain active suppliers in Hong Kong, Macau, Taiwan, the People's Republic of China, South Korea, Japan, Singapore, Malaysia, Thailand, Pakistan, Bangladesh, Swaziland, England, France, West Germany, Hungary, and Brazil.

In the early 1970's, we made a corporate decision to prepare all of our own paperwork for Customs transactions in Chicago. The intended, and actual, results of our action were to improve our day-to-day working relationship with U.S. Customs, maintain a greater degree of control over procedural details and both direct and indirect costs for each transactions, and reducing the cost of preparing Customs entry documentation for essentially repetitive situations. For most of the 1970's I performed these functions myself. Since approximately 1978, the day-to-day import operations have been handled my administrative assistant under my direct supervision. We utilize the services of licensed customs brokers to handle the 1-2% of our shipments that are entered at ports other than Chicago.

II. CUSTOMS IN LOS ANGELES - GLOVES MADE IN SWAZILAND DETAINED FOR 46 DAYS PENDING INVESTIGATION OF COUNTRY-OF-ORIGIN

In late 1986 and early 1987, we imported light weight cotton gloves manufactured in Swaziland, a sovereign nation totally land-locked by the Republic of South Africa. During this time period, the United States was enforcing an embargo on virtually all imports from the Republic of South Africa. Our first two shipments cleared Customs in Chicago without any problems. We received a purchase order from a customer in Southern California and, as a result, we arranged for direct shipments of gloves from Swaziland to Los Angeles. The first shipment arrived on April 29, 1987.

On May 4, 1987, our customs broker filed the entry documents and duty deposit with Customs.

On May 11, 1987, we received a telephone call from Ms. Celia Ridel, Import Specialist, requesting copies of purchase orders for the fabric shipped from Hong Kong to Swaziland together with the manufacturer's certification of production costs, factory size, number of employees and equipment.

On May 12, 1987, the requested information was sent directly to Customs in Los Angeles by L.G. Traders (HK) Ltd., the supplier of the fabric and the contact in Hong Kong.

On May 13, 1987, we submitted a copy of the Swaziland certificate of origin, duly authenticated by the Swaziland Ministry of Commerce, Industry, and Tourism..

On May 19, 1987, Customs in Los Angeles issued a formal notice of detention of the shipment.

On May 20, 1987, we requested the assistance of the Swaziland Embassy in Washington DC.

On May 25, 1987, the Ministry of Commerce, Industry, and Tourism in Swaziland sent a telex to the Ambassador at the Swaziland Embassy in Washington confirming the authenticity of the certificate of origin and requesting contact with Customs.

From telephone conversations with Ms. Celia Ridel of Customs in Los Angeles, Customs' was concerned about circumvention of the South Africa embargo and needed proof of the existence of the factory in Swaziland.

On May 26, 1987, the factory in Swaziland and our Washington attorneys arrange for a personal visit to the factory by Lee A. Brudvig, Political Economic and Commercial Officer at the U.S. Embassy in Swaziland.

On May 27, 1987, we received a report from the factory that Brudvig visited the factory and promised to inform Los Angeles Customs. This same day, Ms. Ridel inquired how workers could be trained to sew gloves in such a short period of time. We informed her that the workers were originally trained at a garment factory that became bankrupt.

On May 28, 1987, we informed Ms. Ridel that Brudvig visited the factory. She replied that consular and embassy officers often do not know what to look for at a factory visit.

On June 1, 1987, our customs broker in Los Angeles received information from Customs that all information had been received and that a decision would be made in about one week.

On June 16, 1987, Customs authorized the transfer of the container to Price Warehouse for intensive examination of the merchandise. The accrued demurrage through June 16 was $1,254.50.

On June 19, 1987, the shipment was released by Customs.

On March 5, 1988, Customs extended the liquidation of this entry to allow for further Customs action.

III. CUSTOMS IN LOS ANGELES - IMPORT SPECIALIST FAILED TO ACCEPT COUNTRY-OF-ORIGIN MARKING OF GLOVES

On June 10, 1987, we imported a shipment of work gloves through Los Angeles, California. While these gloves were identical to gloves that we previously imported and, in fact, continue to import, this particular shipment was sold intact to the Los Angeles Unified School District. Like our other industrial gloves, we utilized marking of the sealed containers of one dozen pairs and requested a waiver of individual item marking requirements as permitted in Section 304(a)(1) and (3) of the Tariff Act of 1930. Customs in Los Angeles did not accept our marking waiver request and issued a marking notice on June 11, 1987.

We received information from our Los Angeles customs broker that Customs would accept a letter from our customer indicating that the customer was aware of the country of origin. On that basis, we obtained such a letter from the Los Angeles Unified School District and submitted the letter to Customs with our marking waiver request.

No further correspondence has been received from Customs in Los Angeles regarding country-of-origin marking for entry number 277-0067688-8 of June 10, 1987.

IV. CUSTOMS IN SEATTLE - IMPORT SPECIALIST FAILED TO ACCEPT PREVIOUS CUSTOMS RULINGS REGARDING COUNTRY-OF-ORIGIN MARKING OF GLOVES

Section 304(a)(3)(D) of the Tariff Act of 1930 permits an exception from individual item marking requirements where the containers are permanently and legibly marked and the merchandise is received by the ultimate consumer in the unopened container. Rulings to this effect were issued by Customs Headquarters on May 14, 1974 (reference 703319) and February 22, 1978 (reference 708401) and also by the District Director of Customs in Seattle on May 1, 1975.

From April 23, 1986, through July 15, 1986, Mr. David E. Daniels, the import specialist handling gloves in Seattle, issued 4 marking notices requiring us to mark the merchandise on all 4 shipments by the pair. Mr. Daniels claimed that our marking of the sealed containers of one dozen pairs was insufficient to satisfy him that the gloves would reach the ultimate consumer legally marked. Three of the shipments in question were sold exclusively to one industrial buyer and this buyer agreed to inform Customs that the buyer, as the ultimate consumer, was aware of the country of origin. On that basis the marking notices for those three shipments were rescinded.

The fourth shipment involved 4000 dozen pairs of cotton industrial gloves, ladies' size. Upon inquiry, we informed Customs that such common cotton work gloves are sold to a variety of our industrial customers and occasionally to other industrial distributors for resale to industrial customers. The gloves are not packaged or packed for retail sale by the pair and, in fact, are clearly marked as "INDUSTRIAL WORK GLOVES TO BE SOLD BY THE DOZEN ONLY". Customs was adamant about refusing to accept our previously approved marking of the gloves. An appeal to Customs Headquarters on July 29, 1986, failed to provide any assistance.

On September 23, 1986, we received a notice from Customs that we were being assessed additional marking duties of 10% ad valorum. We immediately responded to the proposed duty increase by appealing for acceptance of the existing marking on the strength of the previously issued rulings as well as requesting a waiver of individual item marking for economic reasons under provisions of section 304(a)(3)(K) of the Tariff Act of 1930. This latter condition permits a marking waiver if there was no intent to avoid compliance with marking regulations and the cost to re-mark the merchandise would cause the sale to be at a loss. We provided Customs with a full calculation of the cost for our employees to re-mark the shipment.

In addition, since Customs was apparently concerned that gloves which we might sell to other distributors for resale might end up sold in other than full dozen units, we offered to restrict the sale of this particular lot of gloves to industrial end users exclusively. Customs did not consider our offer when they rejected our October 10, 1986, marking waiver requests. Included in the Customs rejection dated November 18, 1986, was Customs' opinion that we should hire temporary workers to accomplish the marking rather than utilize our existing, trained work force.

On January 6, 1987, Customs imposed liquidated damages equal to the value of the merchandise and duty totalled on the basis of our failure to mark the gloves. Our Washington attorneys assisted in the preparation of our petition for mitigation of the liquidated damages. Customs in Seattle accepted our petition and noted that "...there are extreme mitigating circumstances present which warrant complete mitigation of the monetary claim...The liability is remitted by authority of 19 CFR 172.21 and the case is now closed on our records."

On May 27, 1987, Customs again notified us of their intent to impose marking duties. We again filed a petition requesting that the proposed action be rescinded.

After telephone conversations between Mr. Daniels at Customs and our Washington attorneys, it was agreed that our original offer from October 10, 1986, to control the distribution of the gloves to exclusively industrial end users would be satisfactory and the matter considered settled. We believe that Customs entry 277-86784943-3 of April 23, 1986, is now liquidated and the matter permanently closed.

V. CUSTOMS IN CHICAGO - ENTRY PROCESSING PROBLEMS

Our experiences with the U.S. Customs Service in Chicago differ greatly from our experiences at other ports. This may be due to the fact that Customs in Chicago is much more familiar with our company. Throughout the 1970's and early 1980's, our relationship with Customs was both professional and personal. We knew the import specialists and supervisory inspectors by name and they knew us. As Customs staff were rotated for training purposes, we invited the new import specialists to visit our facility, meet our staff, and examine our products. We would review the history of our trade in certain types of gloves as well as the applicable classifications. As a result, understandings were achieved and communication channels established that would expedite the proper future processing of our Customs transactions.

By the mid 1980's the situation at Customs in Chicago seemed different. The import specialists no longer had time to visit us and frequently could not spare the time for importers to visit them. In fact, the Customs import specialists began to limit the hours during which they would accept telephone calls from importers and messages received at other times would likely not be returned for at least a day. Personal relationships were non-existent. Communication channels ceased to function. In fact, intra-Customs communication seemed to suffer as evidenced by the failure of Customs commodity team leaders to adequately train and inform their import specialists of certain procedures. Similarly, Customs import specialists and Customs personnel responsible for bonded warehouse operations often fail to properly handle transactions such as warehouse withdrawals for consumption that require the approval of the import specialists.

As an example, we obtained Customs' agreement to permit us to use the form 3461 Entry/Immediate Delivery procedure for quota and potential quota merchandise entered for storage in our class 2 bonded warehouse. Normally such merchandise entered for immediate consumption requires "live" entry/entry summary documentation which must be processed, approved, and duty paid prior to release of the shipment. The "live" entry procedure is time-consuming and cannot be accomplished within the free storage time permitted by cargo carriers. As a result, cargo demurrage/detention expenses of $25-$100 per day accrue.

Since the entry/immediate delivery document set is processed faster than "live" entries, we are normally able to take delivery of our shipments within the two day free time permitted by carriers. Of course, a formal entry/entry summary with duty deposit must be submitted within ten working days of the shipment release.

On May 22, 1987, we filed entry/immediate delivery permit number C39-0004281-4 covering a shipment of cotton gloves from Japan intended for storage in our bonded warehouse. The Customs forms clearly indicated in the appropriate space that the shipment was for bonded warehouse storage. However, on June 2 the import specialist rejected our entry/immediate delivery permit claiming that shipments of gloves from Japan require "live" entries. We cannot account for the processing delay from May 22 to June 2.

On November 25, 1987, we filed entry/immediate delivery permit number C39-0004365-5 covering an identical situation. The Customs import specialist rejected the entry/immediate delivery permit on November 25 for the same reason as before.

The fact of our agreement to permit entry/immediate delivery procedures for bonded warehouse shipments was called to the attention of the import specialist when the document set was resubmitted on November 27. The shipment was subsequently released on December 2.

A recent regulation issued by Customs Headquarters in Washington requires that importers of textiles and apparel file a declaration with each entry stating the additional cost, if any, to obtain quota "rights" or to reimburse the seller for his purchase of any quota necessary to export the merchandise. While it has always been necessary for importers to declare all costs involved in every transaction, importers must now make a specific declaration, positive or negative, for every shipment.

We included this quota charge statement with our entry papers for Customs entry C39-0004379-6 when we filed our entry/immediate delivery permit covering the movement of our shipment of cotton gloves to our bonded warehouse. The Customs import specialists normally mark our supplier's commercial invoice with notations indicating receipt and approval of the quota charge declaration, textile export visa, and country of origin textile declaration.

We filed documents to withdraw this shipment from our bonded warehouse on February 2, 1988. Our withdrawal was rejected by the import specialist claiming that we had not filed the necessary quota charge declaration. Since the original entry/entry summary C39-0004379-6 had been accepted, it is reasonable to believe that the quota charge declaration was properly included in the document set at that time. Apparently the import specialist rejected our withdrawal application because the original documents with the quota charge declaration were not properly filed by Customs in the Customs folder covering merchandise in our bonded warehouse.

We resubmitted our withdrawal request and concurrently requested the Customs warehouse section to attempt to locate the full entry packet with the required quota charge statement. Our withdrawal application was again rejected on February 9 and resubmitted February 12. It was finally approved on February 16, 1988.

The importation of textiles and apparel from the People's Republic of China is regulated, monitored, and restricted by a bilateral textile agreement between China and the United States. Included in the terms of this agreement is the provision that every shipment of textiles and apparel will be accompanied by a Textile Export License/Commercial Invoice combined form which bears an original visa stamp with the license number, merchandise category number, quantity, date, and the signature of an authorized Chinese official. This document was standardized in the trade several years ago.

On September 8, 1987, we filed entry/immediate delivery permit number C39-0004323-4 covering a shipment of cotton gloves from China to be stored in our bonded warehouse. All necessary documents, including the combined Textile Export License/Commercial Invoice with proper quota visa, were included. On September 15, 1987, the commodity team leader rejected our entry/immediate delivery permit claiming a missing commercial invoice. Our import manager resubmitted the entry document set with the annotated explanation that the commercial invoice is a combined form with the textile export license.

The shipment was, in fact, released by Customs on September 17, 1987, but our bond was posted on September 24 for the alleged missing commercial invoice. On October 6, 1987, we received another message from the commodity team leader claiming that we had not submitted a commercial invoice. The document bearing the quota visa is clearly titled "TEXTILE EXPORT LICENSE/COMMERCIAL INVOICE". To our knowledge, there is no regulation prohibiting such combined forms and, in fact, this is the standard form used throughout the country for shipments of textiles and apparel from China.

VI. CUSTOMS HEADQUARTERS - ALL GLOVES MUST BE CONSIDERED POTENTIALLY QUOTA-RESTRICTED MERCHANDISE

On February 28, 1986, Customs Headquarters issued directive number 3500-07 which specified the types of products not eligible for entry/immediate delivery processing. Such merchandise is normally of the type subject to or potentially subject to quota restrictions and must be entered using the entry/entry summary ("live" entry) procedures. Nearly all types of gloves classified in Schedule 7 of the Tariff Schedules of the United States Annotated (TSUSA) were included to be subject to live entry procedures.

The TSUSA clearly delineates between textile gloves and non-textile gloves by item number, the former in the range 704.05 - 704.90 and the latter in the range 705.35-705.90. Well over half of our shipments of imported gloves, in terms of both quantity and value, are non-textile gloves. These would include gloves manufactured from leather, rubber, plastic, and even stainless steel. In addition, the definition of non-textile gloves includes gloves manufactured by combining textile fabrics with leather, rubber, or plastic as classified by both Customs' historical classification rulings and the international Multi-fiber Agreement for textile trade.

We therefore wrote to Customs on March 4, 1986, requesting a revision in the product list or a more substantial explanation why obviously non-quota glove shipments were precluded from entry/immediate delivery processing. Customs' reply dated March 28, 1987, explains the decision on the basis of "policy" and "...concerns about quota circumvention."

VII. CONCLUSIONS

Our experiences with Customs import specialists in Seattle and Los Angeles regarding product marking lead us to two conclusions. First of all, our experiences are evidence of gross inconsistencies between and among different Customs ports of entry concerning the interpretation and enforcement of regulations and rulings. On a matter as relatively simple as the marking of industrial gloves, the standard of product marking which has been accepted for decades in Chicago, New Orleans, Baltimore, Philadelphia, Boston, Miami, and New York apparently causes a problem at Seattle and Los Angeles.

Secondly, we suspect and conclude that some Customs officials fear criticism from their superiors, from other agencies whose regulations Customs must enforce, from Congress, and from domestic industry. This fear is based on strict interpretation and enforcement of regulations whose violation could be a highly visible offense, such as country-of-origin marking.

Our experience with Customs in Los Angeles regarding the gloves from Swaziland reinforces our conclusion about fear of criticism and the resulting overreaction by Customs.

At the time our shipment arrived in Los Angeles, the embargo on South African merchandise was in full force and we imagine that no Customs officer wanted to risk releasing merchandise, particularly textiles and apparel, which might be remotely suspected of circumventing the embargo. However, the amount of time consumed in making the investigation was, in our opinion, both excessive and costly in terms of demurrage and other expenses incurred.

This is, in fact, our summary conclusion based on the experiences in Los Angeles and Seattle. Obviously the Customs Service has the obligation to enforce the laws of our country. However, priorities should be established and criteria for different degrees of enforcement investigations and actions developed and implemented so that Customs' resources (time and money) are more effectively and efficiently applied.

Established importers with a good history of Customs transactions and cooperation do not deserve expensive experiences such as those our company faced in Los Angeles and Seattle. The cost is too great - the cost to Customs, the cost to us as importers, and the cost to the economy in general as a result of our need to recover the nonproductive expenses imposed on us by Customs' actions.

From our experiences with Customs in Chicago, we conclude that the staff is both overworked and undertrained. The enforcement actions required of Customs by other agencies have increased the amount of work necessary to process an increasing number of transactions. As a result, those actions which would improve Customs operations for the future, such as better training, better internal communications and inter-departmental cooperation, and more substantial personal contact and understandings with major importers, must be deferred simply in order to attempt to keep up with the daily work load.

We conclude from our experiences corresponding with Customs headquarters that there is an apparent adversary relationship between the United States Customs Service and American importers. Most of the regulatory, interpretive, and enforcement actions taken by Customs over the past few years seem to be directed at responding to and preventing recurrences of infractions and violations rather than expediting the processing of an increasing number of transactions. Those "bad apples" among the community of importers who are intent on circumventing the laws of our country will attempt to do so. Customs' actions intent on preventing even the smallest violation must be evaluated in terms of cost effectiveness.

Chairman Pickle. Thank you. Does that complete your testimony this morning?

Mr. Rivkin. Yes, sir.

Chairman Pickle. Thank you, Mr. Rivkin. Now, Mr. Kobre, if you will proceed.

STATEMENT OF JERRY KOBRE, PRESIDENT, RSK INDUSTRIES, INC.

Mr. Kobre. Mr. Chairman, and Congressman, if you will indulge me just a couple of extra minutes to that 5-minute rule, simply because the problems that we are currently having with Customs relate to something that is brand new in the retailing industry, and if you are interested in finding out the difference, as to what has been happening lately and why things may be outdated, I just have to give you just a little bit of background. I promise it will not take more than 2 extra minutes.

Chairman Pickle. Proceed.

Mr. Kobre. Thank you. I am president of RSK Industries which is a division of Courtland Manufacturing. We manufacture children's clothing. Domestically, we have 13 operations in the State of Virginia.

We make dresses and sports wear. We also have a screen printing operation, garment dyeing, and we employ over 1,200 employees. We are part of a $60 million company. We do work, some of whom are wholly-owned contractors where they only work for us, in Pennsylvania, South Carolina, North Carolina, Florida, New York, and West Virginia.

In my other life, I also happen to be the mayor of Chestnut Ridge, N.Y., which is a community of about 10,000 people.

My company has four offshore operations. Right now, all our operations are in the Caribbean. They are in Haiti. We have also worked out of Haiti, Costa Rica, Barbados, and the Dominican Republic.

Over a year ago, I was one of the people invited to the White House, where we were spoken to by Secretary of State Shultz, and at that time, Secretary of Commerce, Malcolm Baldrige.

We were asked, as manufacturers, and as U.S. citizens, to help the U.S. Government, by helping the country of Haiti, by giving them jobs, and we were challenged to double our operations and double the number of employees that we had in Haiti, because that seemed to be Haiti's greatest problem, jobs, within 1 year. We did just that, and today, we have between 600 and 800 employees in Haiti.

It was not that we just did what we were asked. You helped quite a bit, by making it more difficult for U.S. companies to import from the Orient. That was a tremendous, tremendous help to the U.S. corporations. It meant that we could expand our operations as more and more business came back to the United States, and we added two additional cutting facilities, finishing facilities, shipping, both in Virginia and in Miami.

To understand our problems with Customs, you must know what the industry is like today. No longer can we, as manufacturers, garment manufacturers, basically put a line together and go out and sell it to everybody, which meant that in the past you could go out and manufacture your garments well in advance, without any real time limits involved, and then go out and sell it and it would be here on time.

The world has changed. In the last 3 years, most of your national chains, such as J.C. Penney, such as K mart, such as Sears—they all have color stories, where they hire people to decide what their stores are going to look like each season, colorwise, and one is not the same as the other.

The idea of that is so that you can sell four or five different tops that go with the same bottoms. Everything fits. Everything will mix and match. All right. On top of that, you have buyers who basically redesign their own garments so it fits what they believe to be either the Sears' customer or the K mart customer, or the J.C. Penney customer.

And then they have delivery dates, and these delivery dates are absolutely firm. In many cases, if you do not deliver the garments to them in their warehouse, on time, your order is automatically erased from the computer, and you have to then try to get a brand-new order written, and if business does not call for it, it is cancelled, and cancellations can be enormous.

In some cases, stores can automatically return goods even if the home office does not want them to. They cannot stop it. If you ship past cancellation date, the store has a right to return it.

Also in today's world, which is different in the last 3 years than it is ever been before—and you have to be aware of that—the fabric mills no longer stock fabric, so you cannot go out and just buy 1,000 yards of this and 1,000 yards of that as your orders come in. Nobody sits with anything any more. You have to give them printings, and it takes 4 to 6 weeks to get it printed, and then 1 week or 2 before you get it.

So the cycle today to manufacture goods is much, much longer than it ever has been before, but the cycle from the retailer is much shorter. So all the manufacturers are caught right in the middle. We do not have enough lead time.

The mills have to be on time, the trimming manufacturers have to be on time, and now, when you are talking about the Caribbean, your transportation has to be on time, and if you have been down in the Miami port, and if you have looked into what the problems are in transportation, with Haiti Air, that flies every once in a while, and the only other airline that carries freight is Air Haiti who has a few planes and they are always out of service. It is a nightmare getting your shipments in and getting them in on time.

We never plan to be late, but there is not much time that we are able to build in because of the above things that cause for the delays. Now let me get to the Customs problems. All right.

First of all, let me state this: the officials in the Miami port are courteous, they are honest, and they are easy to reach. The problem is not with the officials, as I see it. It is in their enforcement of what they believe to be what the Government wants, but in doing so, they can very easily bankrupt many of our U.S. companies.

We are—and this is very important—we are a law-abiding company. We have never tried to cheat on duties. We have never done anything we should not have done, over 15 years, and we have never been accused of not paying the right duties, or anything like that. We have never been accused of doing anything illegal, and it is important that you realize that that is our record, when you realize what is happening to us.

Now let's go into the exact things that we are talking about, and I will go quickly.

If a shipment were to come in from Haiti, and let's just say, for argument's sake, in one trailer we have 5,601 dozen, and 7 pieces. Up until just recently, if the Haitian paperwork added up to 5,601 and 8 pieces, we could not get that shipment out.

In other words, what we would have to do is go back to Haiti and get a new visa that would read 5,601 and 7, even if we said cannot we just leave you one piece, and let us have the rest and we will get the piece of paper for that one piece, because I have got a delivery date, and if I do not get it into K mart's warehouse it is going to be cancelled.

Now that half a million dollar shipment is going to be worth about $100,000 to me because it is designed for their color scheme. It is designed for what their buyer wanted. Who else do I sell it to?

Well, just recently, they changed that to five pieces, but that is the same—the same problem really exists. You have to understand, you are dealing with a Third World nation where it is a miracle they can count to 5,601, and that is true.

When you open up a box, that box, a dozen, could contain eight, could contain 15. The education is very, very poor. They do not speak English. We have Americans that we send down there but it is very difficult to have them stay there and live there.

So, we need a little bit more latitude in what their arithmetic can come to, and the fact that we can get most of it out, and if there is a dozen or two in question, leave it there, we do not mind leaving it there, and we will get additional papers, and we will bring in a new visa for what is missing.

Now very often what happens is, when they ask for a new visa, we go back to the Haitian Government. We get a new visa, but the Haitian Government official, if he is working, by the way—because, you know, with what goes on over there, aside from the unbelievable number of holidays—if there is any chance of any turmoil, they do not come to work.

So now my shipment is sitting in Miami, I cannot get it out, and the Haitian office is not open because they are afraid to go into work, and then, if they do go into work—this is an exact example—they can hit the stamp on the wrong page.

The first time the entry came in it was on the right page. But now that they altered the number to be correct, they hit the stamp on the second page. Well, that is no good. That gets rejected.

Now it has got to go back again to Haiti. Now I have got the same problems again. All this time my trailer is just sitting there, and as this goes on, more and more trailers build up behind it. Okay.

There are other problems, where sometimes, the number is absolutely clear, and on a second visa, when the stamp is on the wrong page it comes in now on the right page, but they cannot read the number as clearly as they could read it the first time. They cannot tell if the 5 is a 5 or the 5 is a 6, but it was right the first time.

All right. They reject it again because it is not clear. Our shipment loss 1 week can run $1 million. Now, the next thing, and this is important. I do not know if you gentlemen know what a joker ticket is.

A joker ticket is when you buy a garment, on the back of the neck, there is a little piece of paper. I brought this garment with me, you can look at it later, I will leave it here for you. It shows you what a joker's ticket looks like. It is a little girl's dress. OK?

The regulations are that it must say and be visible, "Assembled in Haiti". That is fine. There is no problem. For 15 years I have never had a problem with it. All right.

Then maybe 2 months, or 3 months ago, we went to a computerized ticket, and the girl in Virginia who makes out the computerized ticket, that ticket wound up an inch shorter than it should have on the first time she tried the machine, it went down to Haiti, got put into the garment so it half covers up "Assembled in Haiti". They held up the shipment.

Now you must understand what that means, and this is very important to us, and to everybody who is bringing it in. What they then tell us is we must either remove that ticket and put a new ticket in, which is virtually impossible, or, cut out our own label, or Sear's label, or anybody else's label that is half-covering it, and remove it from the garment.

No. 1, it makes the garment look like a second, and No. 2, the biggest problem is, I have got 14 or 1200 employees, easily, in Virginia alone, who can do this for me for nothing, and they will not let me take my shipment to Virginia to do it. They do not trust me.

Fifteen years of bringing things through the port and nothing going wrong. I cannot take it to my own plant and have my own people fix it. I have to go and pay somebody $10,000 to fix that shipment by cutting out those labels in Miami, because they will not let me leave the port with it.

Then, they tell me there are two more shipments. Well, of course, because by the time they found it, we had three shipments a week coming in. So the other two were sitting in Miami right behind it.

Because of that, I have been on an intensive investigation for 3 months. That means every one of my shipments waits 3 extra days, and it costs me $250 for every shipment extra. All right? And that is like, well, $750 a week. And it is not the money; it is the time. We cannot make the delivery dates.

When I made this statement at a meeting in Miami, the whole room virtually stood up and applauded because everybody has this problem. It is not just me. All right?

Now, I am going to go quickly. There is another quick thing. When papers are lost in Customs—and that means somewhere between the import specialist on the second floor and the office on the first floor where there is a cashier, the papers are lost. Customs admits they have them. They know they got them, but they do not know where they are. While they do not know where they are, my delivery date and my cancel date is coming up. I then have to go and file new papers. I get no special consideration for the fact that they have lost the papers. It just goes in the regular way, and I will have to wait again for my time to come up. And I will have to go through the whole thing again with all the extra time.

When things got so bad with lost papers, I had four shipments held up in the port of Miami. I called the Commerce Department. A woman by the name of Brenda Jacobs was wonderful. Absolutely wonderful. Within 4 hours, all my shipments were out. They had been sitting there 2 to 3 weeks.

I am not even going to get into minor mistakes in paperwork because if the Haitian writes down women's instead of girls', that is no good. I have not even got the right to have my broker change it to girls'. The shipment is girls', everything is girls', we are only the girls' business—it does not make any difference. Got to go back and get new papers from Haiti that say women's. It is ridiculous. Nobody is worried about us.

Last thing: If you know what 807A is versus 807, all right, with 807 we can use foreign fabric, cut it in the United States, and we only pay duty on the value added. 807A, which was a terrific program put in by Congress—and it was a tremendous boom for use of U.S. fabric—means if we use U.S. fabric, we do not even have to worry so much about quotas because there is a guaranteed level. We can always get more quota if we need it. Terrific. Except they assign the entries into New Orleans, so it was taking forever to get the paperwork, just plain paperwork coming out of Customs.

Now, Customs made a new rule just very recently. They moved it to Miami. The problem is they did not help them with any additional help. So it is taking just as long now to get it out of Miami as it took getting out of New Orleans. You have accomplished absolutely nothing. And the ironic thing is right now it only takes hours to get goods out of Customs that is made of foreign fabric because it can come out the same day, but it takes a minimum of three days to get goods out made of U.S. fabric. I do not understand that one at all.

In conclusion, I guess what I am asking for—and I am asking for it on behalf of our industry—is an understanding that you cannot hold Third World nations to the accuracy and standards of the United States. These people make 20 to 25 dollars week; most of them do not speak English. Their education is minimal. Their ability to work is hampered by the fact that they do not have enough protein in their diets or the heat gets to them. They just cannot be held to our standards. They will tell you, by the way, every time you say anything to them, "There's no problem." That is the best and famous words; "There's no problem." But they really do not understand what you are talking about.

Our business is difficult enough, and we need understanding and the desire of those to help those of us who are honest and legitimate and not threaten our viability as a business week after week.

I want to thank you for listening to me. I am not only speaking for myself but for the others in the industry as well. We feel your efforts will help to resolve our problems.

Thank you very much.

Chairman PICKLE. Thank you, Mr. Kobre.

Now, we will ask Mr. Feinstein if he will proceed.

STATEMENT OF MARTIN FEINSTEIN, GENERAL DIRECTOR, THE WASHINGTON OPERA

Mr. FEINSTEIN. Mr. Chairman, Congressmen, thank you. I am very honored to be here this morning. It is my first experience before Congress as a witness, and I find it kind of overwhelming. Nevertheless, I would like to speak on behalf of the opera companies of the United States.

I have been general director of the Washington Opera at Kennedy Center since 1980. I am also vice president of OPERA America, and OPERA America is the service company which services all the opera companies in the United States, from the Metropolitan Opera down to the smallest organization.

As you know, opera is strictly a nonprofit situation, and all of us work under the same laws regarding nonprofit organizations. We have faced a problem in recent years with Customs. As an opera director, I am used to dealing with temperament and inconsistencies. Unfortunately, we found inconsistencies and a certain amount of temperament with the Customs Service.

Back in 1982, we ventured on a joint production, coproduction deal with the L'Orchestre de Paris with Daniel Barenboim as conductor and Jean Pierre Ponelle as director and designer. The project involved three Mozart operas which were going to be produced by both organizations and presented both in Paris and in Washington. The first time these productions came in—and they each came in in year intervals, 1982, 1983 and 1984—they were regarded as works of art. And we had no problem with it at all. We paid no duty.

Subsequently, the productions had to go back to Europe for presentation by L'Orchestre de Paris, and this time when it came back in 1986, it was regarded as a work of utility. The wood in the productions that was used and the canvas in the productions were regarded strictly on a Webster definition as works of utility. Suddenly, we were confronted with a budgetary problem and an imposition of duty to the tune of approximately $24,000.

Now, I know that does not sound like a lot of money to Congress which deals with big sums, but for opera companies it is a lot of money. We earn only generally between 40 and 50 percent of our income at the box office. We have to go out and raise the rest of that money. So any imposition, whether it is $5,000 or $10,000 or, in this case, $24,000, comes to a lot of money.

In other words, Customs has been totally inconsistent in its definition of works of art, and as a result, many other opera companies besides the Washington Opera have had the problem of bringing in sets from abroad. It is not a big deal because there are only generally, I would say, only four or five productions that are imported from abroad for presentation in the United States. Generally, the reasons for these are artistic reasons because it is a collaboration with another company in Europe, or it is an artistic vision that the director wants to present with his company.

These are works of art. They have no utility as wood; they have no utility or use as canvas. Therefore, we would like to see a consistency on the part of Customs that they are not regarded as utility. And we have suggested in my written statement three possible solutions so that we can solve this problem which is bothering the opera companies of the United States.

I thank you very much.

[The statement of Mr. Feinstein follows:]

STATEMENT TO THE OVERSIGHT SUBCOMMITTEE OF THE HOUSE OF REPRESENTATIVES WAYS AND MEANS COMMITTEE

Submitted by Martin Feinstein, General Director
of The Washington Opera on June 9, 1988

I am Martin Feinstein, and I have been the General Director of The Washington Opera since 1980. I am also Vice President of OPERA America, the nonprofit service organization to professional opera companies in the United States, and serve on the board of directors of the American Arts Alliance. Before coming to The Washington Opera, I was Executive Director of the Kennedy Center and for many years, Vice President of Hurok Concerts. I have been involved in opera throughout my life and have imported and produced ballet, theater, and opera for over forty years.

Today there is a problem facing nonprofit opera companies that import scenery and costumes into the United States from abroad. The problem arises because there is no clear ruling on the importation of sets for opera productions, as there is on the importation of costumes (851.30 TSUS). Upon entry into the United States, opera scenery has been classified by customs collectors in many different ways, thus creating inconsistency and confusion. The Washington Opera is one of many companies that have experienced uncertainty in the interpretation of current rulings by customs agents, and have faced unnecessary hardship and financial burden because of these inconsistencies.

Opera sets are paintings on various materials, such as canvas and wood, executed entirely by hand by highly skilled artists. Set importation is not a major activity (in the field, only about five sets are imported per year), but the recurring uncertainty of this procedure generates unexpected additional expense and scheduling conflicts for the opera company.

In 1982, The Washington Opera undertook joint production of a series of three Mozart operas with the L'Orchestre de Paris. The sets and costumes for Don Giovanni (1982), Cosi fan tutte (1983), and The Marriage of Figaro (1984) were brought into the country duty-free under this joint production arrangement. In addition, the Don Giovanni set was shipped to Europe in 1985 and returned duty-free. By 1986, all three productions were back in Europe. In April 1988, the three sets were re-admitted to the United States, but only after The Washington Opera was charged an importation duty (9.3% for the scenic drops, called fabric [under 386.5050 TSUS] and 5.5% for the wood [under 207.0080]). The total duty, which was not included in my company's budget, came to $24,796.71.

All American opera companies are 501(c)(3) nonprofit institutions. As such, The Washington Opera works with limited resources and tight budgets it plans well in advance. Ticket sales cover approximately 45% of an opera company's operating costs, and government grants and private donations help to meet the resulting deficit. Clearly there is little or no room in our fiscal profile for the unjust and unexpected duties I have just described.

Having brought the Mozart productions into the U.S. once before, we did not anticipate an arbitrary reclassification by an artistically-unaware customs officer. To cover the $24,000 payment, The Washington Opera was forced to make unexpected budget cuts in other artistic areas.

The uncertainty opera companies face at ports and borders has led to a growing reluctance on the part of American opera producers to import sets and costumes. The absence of these art works on stage during an opera performance means the cultural exposure of American audiences ultimately suffers.

Before The Washington Opera paid the $24,000 fee, we wondered "Why this change in interpretation?" We learned that the Mozart sets were classified - quite rightly - as "art" upon their first importation. The second time, however, U.S. customs agents considered the sets to be "articles of utility."

The U.S. Customs Service itself has contended in written rulings that opera sets constitute "art" because they are created by hand (765.03 TSUS). The corresponding duty-free schedule used for works of art has been rejected because that section's headnote excludes "articles of utility." The Customs Service's assessment of "utility" is based on an entry in Webster's Dictionary.

Opera sets cannot logically be considered "articles of utility" because they are unique art works that do not serve any non-artistic function. Sets have no use apart from their aesthetic and decorative value as works of art and are created only to excite the emotions of an audience. The material on which the sets are painted serves no useful purpose apart from the painting, nor does it have any use outside the context of the opera production.

The other, less tangible, art forms involved in producing opera - voice, music, drama, and dance - move across national borders duty-free every day. The "use" of the tangible sets in opera productions does not convert these art works into "articles of utility" any more than the use of music or dance converts those art forms into utilitarian skills.

Set designers and painters are recognized as professional artists around the world and must adapt their work to blend harmoniously with the drama, voice, music, and dance of the whole opera. Sets bring the opera to life and are an integral part of the larger opera art form. Without the sets, an opera production would fail to fulfill the expectations of the audience and the standards of excellence sought by American opera companies. The set's essential role in opera does not detract from its independent artistic value, nor does it ever become an article of utility.

Each opera set reflects the distinctive style of the artist, whose design stems from his conception of the opera and his imagination. The artist's vision sets the mood for the entire production. Design styles differ among artists according to training, experience, and technique. The design may be executed by the designer himself or by other highly trained artists. An opera producer must decide which style will best complement other elements in the production and then commission the most suitable artist.

Opera sets are also objects of admiration and contemplation. A well-designed and executed set is itself singled out at opera performances for the admiration and applause of the audience.

Because opera is a truly international art form, artists, directors, designers, and conductors travel from one country to another to participate in various productions. At this time the United States has recognized that opera costumes must be transported freely in this international flow. I urge this Subcommittee to guarantee the duty-free status of operatic sets because they are of equal importance to the excellence of American opera.

As the Subcommittee continues its consideration of this problem and its possible solutions, I would like to suggest the following options:

1) an addition to Headnote 1, Part 11A, Schedule 7 TSUS

1. This subpart does not cover:

(iv) any articles of utility or for industrial use excluding non-profit operatic and theatrical sets;

2) an expansion of the definition of 851.10 TSUS by adding:

non-profit operatic and theatrical sets

3) the creation of a new classification in Part 4 of Schedule 8:

851.55 Theatrical scenery, including operatic sets brought into the United States for use in non-profit theatrical productions....Free....Free.

Chairman PICKLE. Thank you, Mr. Feinstein. I think I will start with you, Mr. Feinstein, since you have just finished.

You make three recommendations how this matter could be handled differently. Have you passed those recommendations on to Customs?

Mr. FEINSTEIN. I do not believe we have. No, sir, we have not. We have argued with Customs along the lines of utility versus art, but we have gotten nowhere with them, sir.

Chairman PICKLE. Well, then, you have not complained to Customs that because of this change——

Mr. FEINSTEIN. We have complained to Customs, yes.

Chairman PICKLE. If you want Customs to change this approach, you would have to say something to them to let them know.

Mr. FEINSTEIN. Yes. We have complained to Customs.

Chairman PICKLE. What did they say to you?

Mr. FEINSTEIN. They ruled again that these are works of utility, according to Webster's dictionary, and they have imposed duty upon us.

Chairman PICKLE. If they were to interpret these as art, then there would not be this Customs fee; is that correct?

Mr. FEINSTEIN. That is correct, sir.

Chairman PICKLE. But as it is, they have reinterpreted it, and now they have applied a $24,000 fee to you.

Mr. FEINSTEIN. Right.

Chairman PICKLE. And that is the case of one production. Similarly, I guess, that would happen if you received different opera sets.

Mr. FEINSTEIN. That was in the case of three productions which were part of a Mozart cycle, three different operas, and the total duty on it was $24,000.

Now, part of our problem is we cannot even estimate in advance what that duty might be. We have petitioned Customs for a ruling, and it was rejected based on the definition of utility, as I said.

Chairman PICKLE. Well, I have not seen your recommendations or your suggestions. I am glad to have them. We will see that Customs will receive your suggestions, and we will ask for some reason why.

What reason do they give you other than just interpretation?

Mr. FEINSTEIN. A reinterpretation. It is so inconsistent, Mr. Chairman. For example, in 1982, Seattle Opera has two drops which were painted in Canada. They came in at different times. One came in duty-free as a work of art. The second one came in, and a duty was imposed upon it.

Chairman PICKLE. Well, the problem you are experiencing here in the Kennedy Center is the same problem throughout the United States?

Mr. FEINSTEIN. Yes, sir, it is. In Chicago, for example, up to 5 years ago, all the productions were coming in duty-free. Since 5 years ago, duty has been imposed.

Chairman PICKLE. All right. Thank you.

Now, Mr. Rivkin, how long have you been importing gloves?

Mr. RIVKIN. Since 1961.

Chairman PICKLE. From what countries and from what ports?

Mr. **Rivkin**. About 90 percent of our imports clear Customs through the port of Chicago. The remaining 10 percent may be through Los Angeles or Seattle or New York or Baltimore. We import from, as I said, some 16 countries around the world, primarily in the Far East, but also included Swaziland, Brazil, and several European countries.

Chairman **Pickle**. Now, Mr. Rivkin, Customs requires that all products that enter the United States under a quota be cleared for entry at the time of the arrival of goods at the port of entry. Now, in your written statement, you stated that Customs requires that Customs processes nontextile gloves which do not enter under a quota as if they do enter under a quota.

Will you explain what difference that really amounts to in your substitution? And is it a problem for you?

Mr. **Rivkin**. It amounts to a significant delay in processing. As you correctly state, the quota enforcement procedure is necessary prior to the release of the merchandise. The tariff schedules as they currently are clearly delineate between those products that might be subject to potential quota and those which are not by their classification.

The arbitrary decision of the Customs Service to consider all gloves as potentially quota and subject to this kind of intense scrutiny is costly; it delays the release of the merchandise and can impede the free flow of trade. In addition, at the very simplistic level, it has put more work on an already overburdened team of Customs import specialists, because now they are not only dealing with the textile and apparel quotas that it must enforce, but they have got to look at documentation to verify that another shipment is not textiles and apparel.

Chairman **Pickle**. Mr. Rivkin, we have a vote on. The Chair is going to ask Mr. Dorgan to assume the chair and continue the discussion with you and other members. We do not wish this panel, though, to leave because other members are coming back to ask questions.

Mr. Dorgan will assume the chair, and we will continue in the hope that we will not have a break in the testimony. If you will, hold up just a minute, Mr. Rivkin.

[Pause.]

Mr. **Dorgan** [presiding]. I thank the panel's indulgence. I have just voted and came back early so we can continue. The chairman indicated that he will vote and be back, and other members of the committee wish to inquire. So we will cover a number of issues, and then they will be back and to inquire.

Mr. Kobre, you testified about some activities that you have in Haiti. I have been to Haiti within the last year or so, and most of the twin plants that were established there have now been closed because of the political unrest, the twin plants with Puerto Rico. Many of the American jobs, or the jobs that American firms had established in Haiti have now dissipated because of the political turmoil.

I was particularly interested in your discussion of your plant in Haiti. You explain in your testimony that you have had some problems with a number of goods shipped from Haiti exceeding the number indicated on your export documentation. Could you explain——

Mr. **Kobre**. Excuse me. It could be either way. It could be over or it could be under.

Mr. **Dorgan**. All right. Could you explain that? How does that happen, and what are the consequences of it?

Mr. **Kobre**. Well, what happens is, as they are loading the goods on a truck, a trailer to leave Haiti, and they say there is 5,610 dozen on there; then the girl goes to the Haitian consulate, and she tells them we have 5,610 dozen going out, and they hit it with a visa and they write on there 5,609 or 5,611. And it just does not match the actual paperwork filed with Customs. So there is a variance. It could be just a piece. It could be a dozen between what the visa reads and what paperwork actually accompanies the shipment.

So when the actual bills come in—in other words, the papers that leave Haiti with the shipment that go and are submitted to Customs vary slightly from the actual visa issued by the government, the Haitian Government. That is when the trouble starts.

I guess what I am asking as a remedy is simply let us get it out, and we will get the paperwork straightened out.

Mr. **Dorgan**. So your recommendation on streamlining out of the Customs is what, again? How would you solve that?

Mr. **Kobre**. I would say that if the dozen count is a minimal difference—the question is: What is minimal? Let us just say it is within 15, 20 dozen difference of what is stated. We would pay the duty on the full amount, the higher amount. We would be willing to pay the duty as if the goods were there, even if it is not. Then, we would go back and get a new visa for the missing 10 or 15 dozen.

Mr. **Dorgan**. I see. The problems that you say you have with Customs Service, are they consistent at each port of entry, or do they differ?

Mr. **Kobre**. Well, I would say 98 percent of our goods come through the Miami port. And if you are asking are they aware of what is going on, the answer is absolutely yes because we are forever calling up and asking for help, especially in an area like the example I gave you with the joker ticket. I have to find some manufacturer in Miami, in the city of Miami, who does not work for me, has his own business, and is going to be somehow good enough to take my garments into his place and cut out labels for 5,000 dozen—that is 60,000 labels—so that I can then have Customs come over and look at it and then send it to my own plant—it has to come to my own plant anyway—to be pressed, put on hangers and shipped out to the customer.

Mr. **Dorgan**. So what I hear you say is there should be some kind of a de minimis test so that you can move things through; and if there is a variance that is not significant it can be resolved in an error resolution procedure instead of holding the whole thing up.

Mr. **Kobre**. Yes. For those that have a record of not having any problems with Customs; in other words, for those who have not ever been accused of doing anything wrong, there should be some consideration, yes, given to those companies to be able to make up for the problems caused by these Third World countries—not all the problems are caused by them either. There are mistakes made by some of the retailers, the national retailers.

For instance, a company like—well, all of them, actually, have their own price tickets, and some of them have their own hang tags. We do not have any choice. We are told we must purchase, let us say, a Sears hang tag. That particular hang tag must go on that garment. Now, that hang tag comes in, and all it really is it tells the mother that if your child is age so-and-so and is the height of such-and-such, this is the size garment you should buy. That tag gets sent down directly to the Miami broker, who then sends it over to the finishing plant in Haiti.

Now, what happens is, somewhere in the text of that tag they made a mistake and put in "Made in USA." Okay? So now that is a problem, obviously, because the garment was not assembled in the USA, but it is on the Sears tag. So we say, all right, we will take it into our plant; we will remove the Sears tag and put on brand new Sears tags—we will order them from Sears—without the words in there. It was a mistake; they made a mistake, you know, and we will take care of it.

No. It must be removed in the Miami area. Well, here we go again. We have to find a factory in Miami who would be willing to take in a tremendous amount of goods and do that for us, and we have to pay them an awful lot of money when I got all the employees in the world sitting in Virginia and Pennsylvania and everywhere else to do it, and I cannot use my own people to do it.

Mr. DORGAN. Mr. Kobre and Mr. Rivkin, especially, as I look at your testimony, your business depends on access and entry and the flow of goods through these ports. Does it make you nervous to come before a committee of Congress and complain about the Customs Service?

Mr. KOBRE. It sure does.

Mr. DORGAN. Why?

Mr. KOBRE. I will answer for myself. My initial reaction would have been yes, except that I am not really complaining about anybody not doing their job. I am saying they are doing their job so damn well, all right, that it is hurting; and that conditions have changed in this world which they do not know about. They have no idea that every retailer is running their own color stories and that we can no longer put goods in work early enough so that we do not have to worry about a delay at the port. They do not know that in today's world basic garments do not sell, and that no matter where you live in the United States, everybody is fashion conscious, so that today everything is fashion and every store is trying to buy closer and closer to the season.

All of that puts on additional pressure and burden on us to get the goods in quickly. Unfortunately, most of the major chains do not look at the Caribbean as an area that they will deal with similarly that they do with the Orient. With the Orient, they go out 9 months in advance, and they give them commitments. But they do not do the same thing. They treat us similar to the same way they would treat a U.S. plant. Maybe they will give us 2 or 3 extra weeks, but that is about it. So the problem is severe.

Mr. DORGAN. Mr. Rivkin?

Mr. RIVKIN. Mr. Chairman, when we saw our import program grow in the early 1970's, through most of the decade of the 1970's and early 1980's, our company maintained a very close relationship with the Customs office in Chicago. There was an informal, if not unwritten, error resolution procedure whereby importers and Customs officials could pick up the phone and talk to each other and resolve problems before they became problems while they were still in the situation stage.

Over the past few years, we have seen that kind of relationship deteriorate, as I mentioned earlier, into virtually an adversary relationship, where Customs officials are unreachable, where a district director does not return phone calls or respond to correspondence until he has an inquiry from a Congressman.

Am I afraid? I will answer your question more directly, sir. Am I afraid? Not really, because what I am looking for is a change in the system to be more accountable and responsible, and I think that the well-meaning people of the Customs Service should be sharing that view. Openly or privately, they should be.

Mr. DORGAN. I did not ask if you were afraid. I asked if you were nervous. A Midwestern distinction, perhaps, but an important one.

I am trying to understand your answer. Humans are the ones that run these systems and interpret regulations and when we have new people come in with a different perspective, there can be a radically different treatment of the same stream of commerce at a Customs site. I sense what you are saying is that in recent years, at least in your experience, there has been a change in the accessibility of people to resolve problems. There has been a change in the willingness of certain people to work through certain areas with problems and find solutions.

Is that what you are saying? Are regulations not at fault here, but rather some people who are not willing to work with you on a reasonable basis? Is that what you are saying?

Mr. RIVKIN. I do not know that I can identify it as the people, sir, as much as I can the system itself and the way people, by human nature, have to respond to the system. I think policy guidance through regulation has been somewhat lacking or perhaps misdirected as to who are the bad guys and who are the good guys, and where should Customs resources be directed.

In the Port of Chicago, which is the area that I am most familiar with, we closed O'Hare field as a separate port of entry 5 or 6 years ago. So now we have got a Customs team at the main custom house in Chicago that is responsible, with virtually the same number of people, for a skyrocketing volume of imports, both by surface and by air coming into the Chicago area.

The Government cannot continue to throw money at the problem by saying go into more computerization and go into more high-tech electronics and go into more things without giving the Customs Service a degree of accountability, very similar to what the chairman mentioned in his opening remarks of drawing a parallel between the Customs Service and the Internal Revenue Service as both being service agencies serving the taxpayer, serving the commercial interests of the United States, but at the Customs level there is no one to answer to. There is no one on whom I can say: You caused me $1,254 worth of unnecessary storage charges in Los

Angeles by holding up a shipment for 46 days when there are other administrative procedures that could have been employed that would sufficiently protect the interests of the United States.

Mr. DORGAN. Thank you very much.

Mr. Feinstein, I have read your testimony, and I was intending to ask a couple of questions. But I am going to ask Mr. McGrath if he would like to inquire at this point.

Mr. MCGRATH. Thank you, Mr. Chairman.

Mr. Rivkin, the chairman stated in his opening statement—and I believe Mr. Schulze reiterated it—that if the Customs Service were not right on every occasion, are they at least consistent on every occasion? Recognizing that you import from many, many areas, which ports do you use to import your products from other countries?

Mr. RIVKIN. Over 90 percent through the Port of Chicago, sir.

Mr. MCGRATH. Into Chicago?

Mr. RIVKIN. Yes, sir.

Mr. MCGRATH. I see Los Angeles and Seattle was mentioned in your testimony also.

Mr. RIVKIN. Yes, sir.

Mr. MCGRATH. On those three, are there wide discrepancies in the manner in which these regulations are applied?

Mr. RIVKIN. Yes, sir. Years ago, going back into the mid-1970's, we and others in our industry obtained rulings from Customs headquarters in Washington concerning appropriate ways to legally mark our product, industrial gloves, for the country of origin and other textile fiber identification regulations. And we were permitted by rulings to mark them by the unit of sale, which is in our industry is the dozen pair rather than the individual pair since we do not market our products to retail channels.

Within the last couple of years, we have encountered a problem with both Los Angeles and Seattle declining to observe those rulings from Washington and, in fact, citing us for penalties and liquidated damages because our products were marked by the dozen rather than by the pair. We have not had this problem for merchandise entered in Chicago or in New York or in Baltimore, Miami, Mobile, New Orleans, or a variety of other ports.

So in the interpretation of rulings issues by Customs headquarters in Washington, we have seen discrepancies. In the case of Seattle, we have even seen the discrepancy go so far as to have a local import specialist at variance with a ruling issued by his district director some eight or ten years prior, which said that this was an acceptable way to mark the product.

Mr. MCGRATH. Since 90 percent of your imports come through the Port of Chicago, and since you are a corporation located in Northbrook, IL, do you think that has anything to do with it?

Mr. RIVKIN. I would hope not, but I really cannot say because it is difficult for me to imagine what goes through people's minds.

We have been clearing merchandise through Seattle since about 1973, a small amount because we maintain some west coast warehousing to service our customers on the west coast. So I would expect that Customs in Seattle would at least have a record to know that we have had activity there. There is 1, 2, 5, 10, 15 shipments a year that we might clear through Seattle. So we are certainly not an unknown commodity.

And if Customs is going to attempt to be consistent, then it is reasonable to expect that through their own networking it should not be too difficult for the specialist in Seattle to pick up the phone and call Customs in Chicago and say, "What do you know about Latex Glove Co.? Are they good people, bad people? Do they play by the rules or don't they?"

Mr. McGrath. Mr. Feinstein, you are a section 501(c)(3) organizatoin and all of your opera companies are. In the cases of other section 501(c)(3)'s, we have made some individual duty waivers in order. Have your opera companies sought that kind of duty relief?

Mr. Feinstein. I don't understand the question, sir.

Mr. McGrath. There are millions of section 501(c)(3)'s. You happen to have, as you stated, six of them throughout the country.

Mr. Feinstein. There are generally four or five opera companies a year who bring in productions from abroad. I wouldn't say that it is more than that.

The number varies. I think it's gone down with the depreciation of the dollar certainly.

Mr. McGrath. We were talking about consistency in the application of duties. I'm asking whether or not since other section 501(c)(3)'s not related to your particular industry have sought and received duty waivers for their imports in the past? I'm wondering whether or not your organization has asked for duty waivers?

Mr. Feinstein. We have not received duty waivers. As I said earlier, we petitioned when this question came up on the change of ruling from a work of art into a work of utility. We petitioned Customs on this matter, and our petition was rejected.

No appeal has been made to Congress until this time that I know of to change the ruling.

I would like to mention that there is a very clear ruling on costumes. Costumes come in duty-free and there is no question on it.

But there has been an ambiguity and an inconsistency on rulings in relation to sets and props.

Mr. McGrath. Thank you, Mr. Chairman.

Chairman Pickle. Now, Mr. Feinstein.

Mr. Feinstein. Sir.

Chairman Pickle. When you have protested the change of interpretation by Customs people, what answer do they give you?

Mr. Feinstein. The answer that they gave us was that they're defining this strictly according to Webster's definition of utility, and that wood serves a useful function; that canvas serves a useful function; and this is no longer a work of art.

Chairman Pickle. And you've replied to them that this is contrary to what their interpretation always had been?

Mr. Feinstein. Yes, sir.

Chairman Pickle. And you're saying they ought to have uniformity not only here but throughout the country based on what is a policy that we can understand?

Mr. Feinstein. That's right.

Chairman Pickle. All right, we'll ask Customs about that and see what response we get to that.

Now, Mr. Kobre, what does Customs say to you when you bring in a shipment that has 6 or 2 dozen more than it should, or whatever the amount is?

Do they just not listen to you, and say send it back, get a better visa?

Mr. **Kobre**. You must get a new visa for the correct amount, even if it's a one piece difference; now it's five, but it was one.

Chairman **Pickle**. What are you asking as relief from that? They've got a problem. The shipment has got to conform to the visa, and if it's over, it's over.

Now you can be either hard-nosed, or you can be practical, you say. How would it be practical? What's a better way for them to handle these shipments?

Mr. **Kobre**. If it's over, and let's say it's over by 10 dozen, pick any number, I say, I'm willing to let them hold the 10 dozen, and I will then get new paperwork, new visa, for that extra 10 dozen.

If it's under, I'll pay the duty for the full amount; I won't question it. In other words, I'll pay it on the full amount, but let me have the goods. And again, I will get them the corrected paper for it.

Chairman **Pickle**. We saw a shipment of goods in Miami Port 2 weeks ago. It came in from Haiti. It had a sticker pasted over the label. It was questionable where it was made.

And we peeled off the sticker and we found out they were actually made in Pakistan or Afghanistan, I don't know which one of the countries.

Now Customs has a right to hold those goods because they're not showing proper country of origin. I presume you have no objection to Customs interfering and stopping a shipment of that sort.

Mr. **Kobre**. No, no, not at all. That's something illegal. That has been going on in many different countries for years where people have been trying to sneak around quotas by sending it from one country to another and sticking a label on it as if it were coming from a country where there was no quota problem.

No, that's totally illegal. And frankly, I don't care what Customs does with those people.

Chairman **Pickle**. Well, you're just saying we ought to have some kind of practice or a rule or regulation of tolerance up to a certain amount.

Mr. **Kobre**. Yes.

Chairman **Pickle**. Some small amount that could be connected without holding the entire shipment?

Mr. **Kobre**. Right. In other words, release the shipment, but let me get the paperwork into them within a specified period of time.

Chairman **Pickle**. All right. Now, Mr. Frenzel, do you have any questions you want to ask?

Mr. **Frenzel**. I do.

Chairman **Pickle**. Mr. Frenzel.

Mr. **Frenzel**. I know it is not an easy thing to testify against a Government agency that has the power to make your life very difficult.

Of course in your case, I don't know how they could make it much more difficult. But nevertheless, it does take some courage.

Customs is one of the oldest agencies in Government; it is on that believes it is independent. And left to its own devices, it occ sionally becomes subjective in its operations.

I remember the last time we had a chance to review Customs Service and change laws was in 1978. At that time we found them, Customs, doing a number of things which seemed perfectly reasonable to Customs but were lousing up commerce and trade in the United States.

The picture you three paint is that we're back in that state again. We have the case of Mr. Feinstein, which shows an utterly loony interpretation by the Customs Service, which counteracts all of the precedent in the law.

You also have your two cases, where you wonder on whose side Customs is. Customs is supposed to be an agency of the U.S. Government, helping to facilitate commerce, and extracting a small measure for the Government for its portion in the arrangement. It does seem to me like Customs is going out of its way to be nitpicky.

We on this committee had thought that we had kept Customs short of people. In fact, we have often suggested that it would be nice to have more Customs agents so that they could inspect more cargo and do a better job.

It looks to me from your testimony that Customs has too many people around who can hardly wait to invent work by harassing you.

I cannot imagine this business of fighting you over one piece, and nailing you for visas that have a stamp on the wrong side of them.

I just can't believe that, and I can hardly wait until Customs comes in and tells us the reason for this precision and exactitude that they are requiring. In the course of commerce we have increased shipments in and out of the country by an enormous amount. We're probably going to double it in the next 8 years, and we're going to have that many more pieces of paper.

There are a lot of opportunities to make mistakes, and if we are going to quibble about a few pounds or a few pieces, we're never going to be able to get the job done.

I wonder if Mr. Rivkin and Mr. Kobre can tell me, I have the same question the chairman did: What do we do with Customs? Do we have to rewrite the law, or how do we work with them?

Mr. KOBRE. I was agreeing with you all the way up to the point where you said you think they have too many people and they're doing an overzealous job. So I'm going to combine that answer with a question that was asked also about whether we're fearful of coming here.

If I were a Customs official in Miami, and I can only really speak for that port, I would be pretty happy in a sense that if you take most of your goods coming in now on the 807(a) program, which is an enormous amount of goods, that was a program designed to help the U.S. manufacturers, all right. And you put it through New Orleans, and now you moved it to Miami, and you didn't give them the sufficient help so that they can move it quickly, that's not a case of too much help.

If I were they, I would be looking for as much help as I could get to make this go faster.

Mr. Frenzel. I agree with that. But everytime they demand an exception procedure of you, they quintuple their own work.

Mr. Kobre. Well, the other part of the problem is, yes, if you were to change the regulations so that we would be allowed to move our goods out of the port and correct our goods, and then submit them to Customs to show that we've done the work, that would certainly take a lot of pressure off of them, from all the manufacturers that are in the same situation.

Mr. Frenzel. Mr. Rivkin?

Mr. Rivkin. Last year, the Congress took what I believe was a very good first step in requiring the Customs Service to create and fund a commercial importers advisory committee. And the Customs Service is now soliciting applications for that committee.

The committee hasn't yet been formed, and has not yet met. And it remains to be seen how effective it will be in opening a communications pipeline to Customs headquarters from commercial importers.

I would also propose a similar ombudsman role, if you will, in the creation of an assistant district director at each port responsible only for commercial importer relations.

I think this will help more clearly define both what Customs' mission is, because as has been mentioned both in this hearing and in the one prior to this in this room, Customs has a multifaceted mission in terms of guarding imports, exports, drug trafficking, passengers, cargo, et cetera.

So I think the missions statement of Customs is somewhat unclear to the people who are charged with enforcing Customs' regulations. And I think Customs has not, at least to my knowledge, set out any performance standards against which they can be measured, by Congress or by the importing community, as far as how well they are fulfilling that mission, and effectively utilizing their people and their funds.

Mr. Frenzel. Obviously, we have to get Customs in here to tell us what they need.

Mr. Kobre. May I make another recommendation? That for minor infringements, that we not be put on intensive investigations. And that these intensive investigations, if they have to be put on, should be put on for a reasonable period of time and then taken off.

They also will not tell us the actual reason for the intensive investigations.

Mr. Frenzel. Well, I agree with that. My file is full of people complaining about once there's an error, and the error occurred in the exporter's paper, the importer wasn't responsible for it, but you never get off the list. You are intensified forever.

Which creates more work when Customs agents could be doing a better job of inspection or analysis or whatever they do.

We clearly have a lot of reorganization work to do, or we aren't going to be able to do the job at hand.

Mr. Kobre. The one other thing is that if, like in any business, my business or anybody else's business, we all make mistakes. And if things are lost in Customs, as there are papers lost in my office from time to time, but it is their fault and they know it, then some preference should be given when we have to resubmit the papers again to put us ahead of the line so that we just don't fall in line and have to wait through the whole process all over again, that would be very helpful as well.

Mr. **Frenzel**. Well, I agree with you. I used to run a business where we cut 2,000 bills of lading a day. We were never judged by the 1,999 that were accurate; we were often judged by the one that was a mistake.

But our customers did forgive us once in awhile. Apparently, Customs never forgives, and it stays with you.

Again, Mr. Kobre, can you tell us what a joker ticket is? I didn't understand.

Mr. **Kobre**. Want me to bring it up to you?

Mr. **Frenzel**. Maybe when your panel concludes, I'll check with you.

Mr. **Kobre**. It is the ticket that goes in the neck of the garment that tells you what the garment is made out of. And it must be sewn into the garment. And it's on every garment.

Mr. **Frenzel**. Thank you very much.

Mr. Chairman, I yield the rest of my time.

Chairman **Pickle**. Thank you very much. And I thank this panel.

We will be in touch with you about questions and suggestions as we continue these hearings, but we appreciate your personal attendance.

Thank you very much.

Now, the Chair will ask the next panel representing the Fingerhut Corp. to come forward.

Mr. Mike D. Laden, manager of the Customs operations. And I understand he'll be accompanied by Mr. James Caspers and Ms. Erica C. Street. If you gentlemen will take your place at the witness table.

The Chair would also like to say to those people here, in talking to members of the committee, the Chair is going to declare a recess around 12:30, and we'll recess for approximately 45 to 50 minutes. Let us say 50 minutes.

I want all the people who consist of panel three, primarily the various inspectors, to be certain that is agreeable to you. We have two luncheons that members either have appointments or will deliver speeches, and in the interest of the committees' activities, we are going to have a recess for lunch and then we will resume again sharply by 1:30. So that is information for the members.

Now, this panel is Mr. Mike D. Laden, and Mr. Laden, if you would present your testimony, we would appreciate it.

STATEMENT OF MICHAEL D. LADEN, MANAGER, CUSTOMS OPERATIONS, FINGERHUT CORP., ACCOMPANIED BY JAMES CASPERS, MANAGER, QUALITY ASSURANCE, AND ERICA C. STREET, SENIOR COUNSEL

Mr. **Laden**. Thank you. Mr. Chairman, members of the committee, good morning. My name is Michael Laden, and I manage the Customs area of Fingerhut Corp.

I also cochair a special seizure committee established by the American Association of Exporters and Importers in direct response to Customs' wanton use of section 1595a(c) to seize commercial cargo.

I am also a licensed Customs house broker. With me at the table this morning are Ms. Erica Street, of Fingerhut Corp.'s senior counsel, and Mr. Jim Caspers, a manager of our quality assurance area.

The vastly enhanced authority to seize import shipments was granted to Customs by virtue of the 1986 Antidrug Abuse Act. The application of 1595(a)(c) is being used to overpower ordinary commercial transactions which are completely void of any suspected drug activity.

Importations are being seized by the Customs Service for frivolous, non loss of revenue violations. Importing, depending on the commodity, can be a very difficult and trying business.

In many cases, legitimate corporations, attempting to successfully navigate the highly complex and technical regulatory maze, make an unintentional and outwardly apparent clerical error. The result? Seizure, and immediate deprivation of property, which is followed by a very lengthy and cumbersome administrative process.

This extreme punishment is austere and unwarranted. We solidly support the use of section 1595 in our war against illicit drugs. Further, we would also agree with the utilization of 1595 to combat wilful fraud or conspiracy to evade Customs' law.

However, evidence of real criminal intent should clearly be present. We contend that the Customs Service has, under the auspices of 1592, adequate tools and remedies to discipline occasionally errant importers.

In 1987 seizures of Fingerhut merchandize conservatively cost our firm more than half a million dollars in penalties, cancelled orders, lost productivity, and other administrative charges and overhead.

The seizures were disruptive, and severely impeded our ability to serve our customers.

We consider ourselves to be judicious and responsible importers. When a problem in our system is identified, we take immediate corrective action.

Last year, and continuing through 1988, Fingerhut Corp. has repeatedly demonstrated its commitment to excellence and accuracy. This dedication has been repeatedly brought to the attention of the Customs Service with little or no positive result.

In our written statement to the committee, we cite several instances which support my testimony. I would like to spend the next few moments highlighting four of these situations, and would welcome any questions you might have concerning them.

In July of last year, this sewing basket, which is filled with implements, and contains a storage area for yarns and patterns, was detained by Customs because they maintained it was luggage.

In December of 1987, after receiving a nonbinding verbal opinion from a very respected commodities specialist, we entered this product, which we market as a sweater-jacket, under a sweater quota category.

A different commodity specialist, upon reviewing the entry, was of the opinion that this product was properly classifiable as a jacket, and ordered Customs inspectors to initiate seizure proceedings. In this case, Customs was prepared to seize products which might have been entered in error.

In another instance, Fingerhut had 6,000 towel sets from Thailand seized because the washcloths were found to be overweight. Our subsequent investigation revealed that the vendor had arbitrarily increased the thickness of the washcloth after reviewing the initial prototype.

The vendor inadvertently forgot to correct the weight, and Fingerhut lost the use of this merchandise for three months, and was fined $28,650.

Finally, in September of 1987, we entered a shipment of ladies capes with scarves imported from Korea. The garments were 65-percent polyester, and 35-percent cotton. After weighing them, Customs alleged that they were 4.6 percent overweight. The shipment was seized, and Fingerhut has paid a penalty of $41,442.

Our petition for relief, which was filed with Customs on October 27, 1987, has not been answered to date, and this despite repeated inquiries to our petition for remission.

In closing, I'd also like to note for the record that Fingerhut Corp. has experienced a multiple seizure from the same vendor on only one occasion. Despite this, and because Customs refuses to acknowledge the fact that an importer deals with thousands of vendors with companies throughout the world, our company has been labelled as a multiple offender by the Customs Service.

This label has delayed our shipments while they undergo longer and more intensive examinations, and has severely hindered our ability to effectively mitigate penalties which are issued to us.

I would like to thank the committee for allowing us this opportunity to express our views and concerns, and we are willing to answer any questions you might have and/or provide the committee with additional documentation that might assist you in your investigation.

[The statement of Mr. Laden follows:]

TESTIMONY OF FINGERHUT CORPORATION
BEFORE THE
SUBCOMMITTEE ON OVERSIGHT
OF THE
HOUSE WAYS AND MEANS COMMITTEE

DELIVERED BY
MICHAEL LADEN
MANAGER CUSTOMS OPERATIONS
FINGERHUT CORPORATION
JUNE 9, 1988

Mr. Chairman, members of the Committee, good morning. My name is Michael Laden. I manage the Customs Area of Fingerhut Corporation, a direct marketing company headquartered in Minnetonka, Minnesota, that imports more than $85,000,000 in merchandise each year. I am also co-chairman of the Special Seizure Committee established by the American Association of Exporters and Importers, that was created to oppose the United States Customs Service's overly aggressive implementation of 19 USC Section 1595 a(c), as a mechanism for the seizure of commercial cargo.

With me at the table are Jim Caspers, Manager of Fingerhut Corporation's Quality Assurance area and Erica Street, Fingerhut Corporation's Senior Counsel. Mr. Caspers is here to answer any questions you may have concerning the efforts Fingerhut has made to comply with Customs laws and regulations and the costs associated with the same. Ms. Street is available to answer any questions you may have that involve legal conclusions.

Fingerhut is typical of the thousands of companies that are being severely burdened by the Customs Service policy that resulted from enactment of the Anti-Drug Abuse Act of 1986 (the "Act"). By amendment to 19 USC Section 1595a(c), the Act provides that:

> "Any merchandise that is introduced or attempted to be introduced into the United States contrary to law (other than in violation of Section 592) may be seized and forfeited."

Customs chose to implement 19 USC Section 1595a(c) (the "Provision") by applying it to any and all violations of law (excepting only those involving classification or value issues). The Provision has been used to seize merchandise for technical and often innocent "violations" such as incorrect determination of the country of origin for quota purposes, entry of textile products with visas for incorrect weights, labeling and marking errors and other clerical errors.

Customs has seized imported merchandise pursuant to that Provision, even in situations where it did not have evidence that the violations involved were intentional. In addition, Customs has determined that merchandise seized pursuant to the Provision will be released only upon deposit of an amount equal to the full domestic value of the seized merchandise. This is true even in situations where not all of the merchandise relates to the error that caused the seizure. In Fingerhut's experience, this practice has caused the deposit of large sums of money without any indication of when the money will be returned.

Seizure of a person's property is an extremely harsh result, so harsh in fact that seizure has historically been limited to the situations set forth by 19 USC Section 1592. The new Provision was also intended to be narrowly applied to merchandise which is actually prohibited from entry into the United States. That intent has not been followed.

The most extensive use of the seizure authority granted by the Provision has been in the area of textile visa violations, where the quantity of weight of the imported merchandise exceeds that which is stated on the visa. Instead of merely refusing admission into the United States, Customs has opted to seize such merchandise as an attempted introduction "contrary to law".

Since December 18, 1984, Customs has seized 25 shipments of Fingerhut goods. During the same period, Customs has detained other shipments and has been reluctant to provide binding advice that would assist Fingerhut both in avoiding additional seizures and detentions and complying with applicable rules and regulations. Of the seizures, thirteen were a result of weight discrepancies. Detentions have been experienced under similar circumstances, without a clear indication as to how a decision between seizure or detention is made.

As Fingerhut began to experience seizures and detentions, it looked to Customs for clarification on classification and weighing questions, in an attempt to determine the standards that would be applied by Customs. In most instances, Customs would not provide even informal advice on how its decisions were made or how Fingerhut could avoid similar problems in the future.

There are several themes common to Fingerhut's dealings with Customs. Customs is for the most part unwilling to communicate with importers. This is evidenced by the fact that Fingerhut has not been notified of pending seizures or detentions in advance. As a result, it has been impossible for Fingerhut to have access to its goods in order to assess the validity of Customs' claims or to explain possible reasons for discrepancies. On numerous occasions, Fingerhut has requested guidelines from Customs that would enable Fingerhut to tailor its own procedures to meet Customs' requirements. The requests were not an effort to circumvent Customs' regulations, but rather an attempt to assure compliance with the same. However, each time Fingerhut has requested such assistance from Customs, Customs has refused.

An example of Customs uncooperative posture is one of the attempts Fingerhut made to avoid weight related seizures. In October 1986, Customs seized four shipments of Fingerhut goods for visa underweight problems. On November 18, 1986, several representatives from Fingerhut met with the Minneapolis District Director and his staff to discuss the seizures, weighing procedures used by both Fingerhut and Customs, and ways to assure accurate weights on future shipments. At that meeting, Fingerhut identified the steps it had taken to assure accurate Customs' disclosures. Customs acknowledged both Fingerhut's efforts and the fact that problems were continuing, but refused to provide additional guidance. As a result, Fingerhut was left guessing at how best to assure compliance with applicable Customs' regulations.

As early as July 1985, Fingerhut established a company-wide policy designed to ensure that its vendors reported the correct weight of merchandise on documents presented to Customs. That policy was distributed to all Fingerhut vendors with instructions that the weighing procedure specified therein was to be used on all Fingerhut shipments. Fingerhut had no weight related seizures from June 1985 until October 1986. The October 1986 seizures prompted the meeting with Customs referenced above and follow up communications with Fingerhut's vendors.

By memorandum dated March 4, 1987, Fingerhut expressly advised all interested personnel, and all overseas suppliers, of the critical importance of reporting accurate information to the U.S. Customs Service. That memorandum provided:

> Therefore, in order to protect and preserve the integrity of our import program, we must ask for the absolute cooperation of each and every integral link in the international process. Every shipment, every document, and every piece of information must be scrutinized for accuracy with a keen and discerning eye. U.S. Customs is the only vendor Fingerhut deals with that exercises such vast and ultimate control over our destiny. With this vendor, there is no margin for error.

Fingerhut's ongoing attempt to educate its vendors continued throughout 1987, and included dissemination of detailed and conservative procedures to be used in weighing merchandise purchased by Fingerhut, as well as directives from high level company officials requiring vendors to add "an additional five percent to the total weight" found to exist, so as to preclude the possibility that Customs would find weight discrepancies.

Most recently, in January 1988, Fingerhut conducted a series of seminars for its Far Eastern vendors, in which it presented a paper entitled "United States Import Guidelines". Fingerhut's policy in regard to "weight discrepancies" provided that:

> ... it is absolutely vital that every vendor doing business with Fingerhut work jointly with the Customs Staff to identify, isolate and correct problems BEFORE they occur.
>
> Many vendors supplying Fingerhut with textile items received a letter concerning seizures late in 1987. That correspondence reminded vendors of their responsibility to Fingerhut in terms of accuracy. Revised weighing procedures were incorporated with that letter and we don't expect, but insist, that they be used when determining weight for products which are regulated by visa/quota.

Despite Fingerhut's efforts, the weights appearing on visa invoices accompanying shipments to Fingerhut have not always reflected the weights found by Customs. As a result, seizures and detentions have continued.

In one instance, Customs seized a shipment of 120,000 towels because the visaed weight of 3120 pounds was 18.75% less than the 3840 pound weight computed by Customs. Customs formally advised Fingerhut of the seizure on September 14, 1987. By petition dated October 7, 1987, Fingerhut requested that the seizure be cancelled upon submission of a corrected visa and payment of a mitigated penalty. In that petition, Fingerhut explained that its vendor had admitted making a clerical error in preparing the invoice which resulted in the visaed weight being understated. Fingerhut advised:

> The vendor has indicated to Fingerhut that because the washcloth appeared defective during production (*i.e.*, too small and light weight), in order to make them look better and feel heavier, the weight of the washcloth was increased by at least 10%. However, the individuals preparing the visa documentation were not notified of this change, and

> therefore, the increased weight was not reflected on the visa. This clerical error, coupled with the fact that the towels most likely absorbed moisture while in transit, in large measure may account for the discrepancy between Customs' weight and the visa weight. Furthermore, the possibility exists that Customs may not have weighed all of the different size towels imported, thereby causing its calculations to be inaccurate. We note that the merchandise is imported in four different sizes (bath, hand, fingertip, and washcloth) and that each size weighs a different amount.

In the same response, Fingerhut also called Customs' attention to the fact that imports of cotton towels from the country of Thailand, in the particular quota category at issue, were not subject to restraint levels, therefore negating any possible motivation on the part of Fingerhut to its suppliers to misrepresent the weight.

Notwithstanding the foregoing, by letter dated October 27, 1987, Customs advised that it would not release the merchandise until Fingerhut deposited $28,650, the equivalent of the commercial value of the shipment, with Customs. Fingerhut deposited that amount to obtain release of the goods. On November 10, 1987 and November 17, 1987, respectively, Fingerhut was advised by Customs that it had determined $28,650 to be the appropriate mitigated penalty amount and was therefore closing its case. That determination was made despite the fact that the seizure resulted from a clerical problem.

In another instance, Customs seized a shipment of 1200 sets of tapestry handbags because the visaed weight was less than the Customs' weight by 5.0%. Customs initially issued seizure notices under both Section 1592 and 1595a(c) of the Customs regulations. Fingerhut immediately questioned the dual seizures and was told that Customs was confused by the new grant of seizure authority under Section 1595a(c) and was unsure of how to apply it. Customs then elected to cancel the 1592 proceeding and move forward with the seizure under Section 1595a(c). Thereafter, by petition dated April 6, 1987, Fingerhut requested that the seizure be cancelled upon submission of a corrected visa and payment of a mitigated penalty. In that petition, Fingerhut restated its weighing procedures, and the steps that it had taken to avoid underweight situations. It also pointed out that the vendor involved had never before been involved in a visa weight seizure.

Customs did not respond to the petition until July 10, 1987, at which time, it mitigated the penalty amount to $41.40. At the same time, Customs informed Fingerhut that it was cancelling the penalty because the administrative costs associated with collecting the same would exceed the amount of the penalty itself. The end result was that Fingerhut lost the use of its goods for approximately four months, incurred significant attorney's fees, and had a seizure added to its Customs' record, in a situation where Customs apparently viewed the original seizure as without practical effect.

At the other end of the spectrum, is Fingerhut's most recent weight-related seizure. On October 1, 1987, Customs seized a shipment of 4390 women's capes because they determined the capes to be 4.6% over the weight specified in the accompanying visa. After investigating possible explanations for the discrepancy, Fingerhut determined that its vendor had in fact adhered to the Fingerhut weighing procedure. Accordingly, without access to the goods, Fingerhut was at a loss to provide a reason for the discrepancy. In a petition for cancellation of the seizure dated October 27, 1987, Fingerhut argued that the weight discrepancy was de minimus, and that therefore there was no motivation on the part of either Fingerhut or its vendor to understate the weight of the shipment. Slight differences in weight can be caused by atmospheric conditions, differences in the accuracy of the machines used to weigh the garments, rounding of fractions, selection of non-identical samples, and differences in the personnel performing the weighing. Thus, when Customs determined that the reported weight was 4.6% under the Custom's weight, it in effect confirmed that the reported weight was accurate.

This seizure is a good example of Customs' total disregard of its own internal guidelines. The guidelines provided that visa weight overages of less than 5%, absent aggravating circumstances, would not be subject to seizure. No argument for aggravating circumstances was made in this case. There was absolutely nothing Fingerhut could or should have done to correct the alleged discrepancy. Fingerhut's supplier weighed the capes before obtaining the export license. Fingerhut did not have the opportunity to weigh the merchandise in the United States before Customs seized the shipment. The weight set forth on the visa invoice was clearly reasonable; it represented 95.4% of the weight reported by Customs. The supplier of the garments was not related to Fingerhut, and to the best of Fingerhut's knowledge, had never before reported weights that were inaccurate. Moreover, Fingerhut had no incentive to attempt to circumvent quota restrictions by understating the shipment's weight, because the capes were not subject to quota restraint levels. Fingerhut therefore, had no reason to question the documentation. Despite those arguments, Customs refused to cancel the seizure or to release the shipment until Fingerhut had deposited the full commercial value of the shipment, $41,422. Fingerhut deposited that amount in November, 1987. It has heard nothing from Customs in relation to this matter since that time. Fingerhut has thus lost the use of $41,422 for approximately seven months, without explanation or action by Customs.

Other instances viewed by Fingerhut as representational of Customs overstepping its enforcement and regulatory authority are set forth below:

1. In October 1986, Customs rejected Fingerhut's entry of a shipment of down jackets because of a dispute over the appropriate classification for the jackets. Fingerhut entered the jackets as chief value down. Customs rejected the entry claiming the jackets should have been entered as rainwear. In three separate petitions to Customs, Fingerhut presented data substantiating the Fingerhut designation. That notwithstanding, Customs has refused to allow entry. The matter is complicated by the fact that all rainwear quota allocable to the country of Korea for calendar year 1986, was used. As such, Fingerhut will never be able to supply a new visa to Customs. The goods have been held by Customs for over three buying seasons, from October 1986 to the present, with no end in sight.

2. During the summer of 1987, Fingerhut was notified by Customs that it had detained a shipment of sewing baskets, because the baskets should have been classified as luggage. Fingerhut was forced to send a representative to New York in order to get a ruling on the sewing kits, that would enable it to have the detention cancelled. Customs provided a favorable ruling, but not before Fingerhut had lost the use of its goods for approximately two months, was forced to cancel a significant number of customer orders, and incurred the expense of obtaining the ruling.

3. In December 1987, Fingerhut inadvertently learned that Customs had commenced seizure proceedings against a shipment of lined seaters. Prior to the attempted seizure, Fingerhut had

obtained a verbal recommendation from Customs, that sweaters with linings, but without fill material, were properly classified as sweaters. Despite that fact, upon entry of the shipment of lined sweaters at issue, a different Customs representative began seizure procedures, alleging that sweaters with linings, but without fill material, were properly classified as jackets. Fingerhut immediately contacted Customs, informed it of the prior recommendation, and requested that the seizure not take place. After additional internal investigation, Customs did preempt the seizure, but again, Fingerhut suffered an unnecessary loss of use of its goods.

4. In January 1988, Fingerhut approached Customs with questions pertaining to the weighing of nylon wallets and similar items. The basis of those questions was whether cardboard inserts (e.g., fake credit cards, fake pens, etc), should be included in the weight of such items for visa purposes. Representatives from Customs in both Seattle and New York, gave directly opposite answers. In light of the responses, Fingerhut again requested access to Customs' guidelines on weighing. At that time, Fingerhut was informed that Customs had no such guidelines.

The consequences of seizure are far greater than mere exclusion of goods from entry. Delay and cost are the primary considerations. The great number of seizures during the past year and one half have caused delays in the issuance of seizure notices which commence the administrative process and permit importers to obtain release of the goods. Accordingly, even where importers are willing to deposit cash in order to obtain release, it is often many weeks before the release will be accomplished. Such delay results in cancelled orders and lost sales.

There are also numerous expenses associated with seizure. Cartage and storage costs are borne by the importer. In addition, significant legal fees and penalties often result. The penalty guidelines under Section 1595a(c) suggest penalties from ten to eighty percent. Penalties are imposed regardless of the innocence of the importer or the significance of the violation. Degrees of culpability are not a consideration.

In 1987, seizures of Fingerhut merchandise cost the company more than $500,000 in penalties, cancelled orders, lost productivity and other administrative charges and overhead. The seizures were disruptive and severely impeded our ability to serve our customers. We consider ourselves to be judicious and responsible importers. When a problem in our system is identified, we take immediate corrective action. Last year and continuing this year, Fingerhut Corporation repeatedly demonstrated its commitment to excellence and accuracy. This dedication has been brought to the attention of Customs with little or no positive result. The provisions of Section 1595a(c) are being used to overpower ordinary commercial transactions which are completely void of any drug activity. Importations are being seized for frivolous and non revenue loss violations that have nothing to do with the intended purpose of the Provision.

Importing, depending on the commodity, can be a very difficult business. In many cases, legitimate corporations, attempting to successfully navigate the highly complex and technical regulatory maze, make unintentional and outwardly apparent clerical errors. The result? Immediate deprivation of property by means of seizure, followed by lengthy and cumbersome administrative processes. This extreme punishment is unwarranted. Fingerhut Corporation firmly supports the vigorous enforcement of the Customs laws and the use of Section 1595a(c) in the war against illicit drugs and willful fraud or conspiracy to evade Customs regulations. However, we object to the enforcement of such provisions against importers who have not evidenced an intent to so evade. It is Fingerhut's position that the Customs Service has, under the auspices of Section 1592, adequate tools and remedies to discipline occasionally errant importers. Further enforcement should not be necessary.

Fingerhut has sought to comply with every applicable Customs law and regulation. Fingerhut is not the kind of company that frequently voices opposition to policies surrounding implementation of those laws and regulations. However, Customs' actions have had such a major impact on the way we do business that we felt it important to make our concerns known. Thank you for that opportunity.

Chairman PICKLE. Thank you. Mr. Laden, by way of background, for my own information, how long has your company been importing goods into this country?

Mr. LADEN. We have been importing since the early 1970s.

Chairman PICKLE. And from what countries primarily?

Mr. LADEN. The primary countries are in the Far East, Hong Kong, Korea, Japan, Thailand, and Taiwan. We do bring in some cargo from Europe and South America.

Chairman PICKLE. Primarily the Far East.

Mr. LADEN. Correct.

Chairman PICKLE. Now, into what ports do you primarily bring your goods?

Mr. LADEN. 90 percent or better goes through the port of Seattle, and we do perform some clearances and examinations in Minneapolis and New York.

Chairman PICKLE. We have today, on the next panel, an inspector from Seattle so we may ask him some questions on this.

You are headquartered in Minnesota?

Mr. LADEN. Yes, sir, Minnetonka, MN.

Chairman PICKLE. With respect to the difficulties you have just described, has this been an ongoing problem? Has it been consistent over the years?

Mr. LADEN. The problems actually began for us in 1985, and they increased in severity just over the last year.

Chairman PICKLE. Did I understand you to say a few moments ago that most of your seizures, holdups, and delays, involved just one port? Do you know whether it involved just one inspector?

Mr. LADEN. Recently, yes; the Port of Seattle. They do rotate inspectors, and commodity specialists, so it's hard to pin down if it was just one inspector.

Chairman PICKLE. If Customs has classified you as one of its worst offenders, you would have to assume that that would be good reason to keep looking at your goods, wouldn't you?

Mr. LADEN. Yes, sir, but we are unable to find out what those reasons are. We have repeatedly—the Fingerhut Corp. has spent great amounts of time and money in an effort and a campaign to demonstrate to Customs what we are doing to take corrective action, in attempting to get from Customs and obtain from them the rules by which we must play this game.

Chairman PICKLE. Given that this has been a serious problem for you and has cost you a lot of time and money and you have ended up with a reputation that you sure don't savor, what steps has Fingerhut taken to change this?

Mr. LADEN. I at this point would like Mr. Caspers, if that is allowed, to answer the question.

Chairman PICKLE. All right, Mr. Caspers, we are glad to have you here, and we would like to know, what steps you have taken to cure these difficulties.

Mr. CASPERS. Well, as part of my responsibilities in charge of quality assurance, we incorporate into the standards that we relay to our suppliers and our agents that represent us overseas a whole spectrum of the requirements that must be met.

And we incorporate into our product specifications and procedures visa weight requirements, textile identification rules and regs, FDA, all the different requirements that have to be met on imports.

We had basically not invented a separate procedure alongside of our normal requirements until the problem started occurring in early 1985. At that time I was asked to develop a specific procedure that was statistically sound and workable in all the different places we do business to enable our agents to, in essence, keep our vendors honest as far as visa weights was concerned, because that was our major issue at that time.

We developed this particular procedure based on a spinoff of a sampling plan that we use both in our receiving inspection in St. Cloud in our distribution facility, and that we ask our agents to use to preinspect the products before they ship.

It is a derivative from Mil. Standard 105. It is a military document that was used for receiving depots in World War II, I believe.

This procedure, it gets statistically kind of complicated, but in essence, all it says is that you take a random sample of the pieces, of various sizes if it is a sized apparel item, weigh these documents or these units, compare the average weights to the documents that the manufacturer has prepared to accompany the goods, and compare the difference if there is a difference.

Our original procedure was that you compare the difference, and if you are within 5 percent, allow the declared weight to go as it is.

And we used the 5 percent based on a verbal statement made by Minneapolis Customs that that was the tolerancing that they would employ upon receipt of the goods in Minneapolis or at Seattle, we presumed.

We received shipments under that control, and we had variances of 3, 4, 5, up to 10 percent. So we concluded that that probably wasn't sufficient.

We changed the procedure to tighten up the control elements somewhat. And the procedure we're operating under right now is the same sampling techniques. But what we tell our agents to do is take this random sample, take the absolute heaviest weight that they happen to come across, pad that an additional 5 percent, and apply that as if that was the weight for every piece in the shipment.

With that margin for error, we thought we would be totally protected under all kinds of variances that might occur.

We have encountered—I do not believe we have encountered a seizure per se, but we have encountered some notifications of variances even after doing that.

In an attempt to establish the groundrules so we could operate under the same system of weight verification that Customs was using, we met in October of 1986 with our district director in Minneapolis and several people in the Customs office to just lay out on the table the requirements that we were demanding of our agents and vendors to follow.

And I personally asked the regional director to tell me what sampling plan, what inspection method, what tools they were using to determine the weights of our shipments.

And he gave me kind of a slippery answer. He said they employ several different procedures. And when I asked whether any were comparable or statistically similar to what we were doing, he said he'd have to get back to me and send me a copy or somehow communicate the standards to us. And as of today we have not seen whatever procedure they use yet.

Mr. **Frenzel**. Will the Chairman yield?

Chairman **Pickle**. Well, I will yield back the balance of my time. And I will be interested in reading your report to see what Customs has replied to you, because we are interested in knowing how Customs will respond to such situations?

Now the Chair recognizes the gentleman.

Mr. **Frenzel**. I thank the Chairman.

First of all, I want to say that in the complaints that have come through my office, the problem is that there is no way to verify how Customs is doing the sample weighing.

You can never get in synch with them if you don't know what they are doing. I believe that is one of the questions our staff is going to have to ask Customs to respond to before they come in, so that they will have some statement on the record.

We cannot have secret weighing standards, or secret devices. Our importers and exporters want to do it right; they want to know what Customs standards are; but we can't find what those standards are. That is an intolerable situation.

Mr. Chairman, I mentioned earlier that we had revised the Customs law in 1978. One of the important sections that we revised was section 1592, which was the statute under which impoundments by Customs take place. What we tried to do was to make a system that was fair to Customs, so that it could get its job done, and yet provide some kind of due process and a reasonable system for the people who are importing and exporting goods.

However, when we last passed a major drug bill, we added section 1595 which gave Customs the opportunity to impound drugs immediately without due process.

In fact, the other night on one of these national electronic media shows, the Commissioner of Customs, when asked whatever happened to the presumption of innocence or due process, indicated that it ends at the border.

Well, maybe it does with drugs. But this committee never intended that section 1595 be used with normal merchandise. This panel, which all happens to be employed by a similar company which is headquartered in my district, is, as the principal witness Mr. Laden has suggested, actually testifying for a large number of importers and exporters who believe we have to get this straightened out.

In the conference committee, and in the House, when we passed that bill, we made it quite clear to Customs that section 1595 was to apply to drugs only. Now they run around impounding merchandise wherever they think it might help them under section 1595, which is clearly contradictory to the intentions of this particular committee.

That is one of the most important things I believe that we have to get straightened out, or we are going to see continuous interruptions in international commerce.

A very small company in my district recently had a 7-month seizure of $3,000 worth of material coming from a Far Eastern company. While the company had to negotiate for a new visa from the authorities of that country, Customs steadfastly refused to release the goods.

The goods were part of a winter promotion. They have recently in the last week been released; but not salable in June, July, and August. A dinky little shipment worth $3,000. Yet the company has lost the resale value, which is six grand. The Customs has fined them $200.

Now, that little $200 fine and seizure has cost the company lost sales, storage charges, interest, and the time of arm wrestling with Customs. The total experience cost them many times the $200 fine.

Now, if we had done that under section 1592, we could have negotiated all that out. We could have sold the stuff. The wheels of commerce could have kept turning, and Customs probably could have got its $200 a lot faster, and the Government would have been better served too.

We really have to iron these matters out. Mr. Chairman, I want to say how grateful I am to this panel for coming down here and helping explain the problem, and to repeat for the committee that the panelists are representing a very large number of importers who have had great difficulty with Customs in this regard.

I want to thank the panel again, and I yield my time.

Chairman PICKLE. Thank you, Mr. Frenzel.

Mr. Laden, when a seizure is made and you are required to deposit a sum equal to the full value of the goods plus the duty owed in order to get your goods out of hock, can you give me an estimate of how long it takes to get your money back? Is it tied up indeterminately? Is it a big problem for you? Does it amount to a large sum of money?

Mr. LADEN. Yes, it amounts to a large sum of money, and it has been a very big problem.

Chairman PICKLE. How big?

Mr. LADEN. Well, we have roughly $42,000 which we paid in October of 1987, immediately filed a petition citing all of the circumstances and reasons for the overweight; and that was the one where we were 4.6 percent over.

To date, as I sit here, we have not even had our first response from Customs, and of course this is June of 1988. We are in the process of following up with them, but there is no telling if they have lost the paperwork, or they are just so backlogged with these types of cases that they are having trouble deciding whether they should mitigate the fine or keep it.

On one other where we came forward with a very, very legitimate explanation after, again, our own internal investigation to determine what had happened, Customs insisted that we pay the $28,650, and has repeatedly now refused several subsequent petitions for relief.

Chairman PICKLE. So in one case you had some $40,000 tied up and in this case, $28,000?

Mr. LADEN. Yes, sir.

Chairman PICKLE. And still your money is being held, more or less in escrow?

Mr. LADEN. Yes, sir.

Chairman PICKLE. That could be a problem for a lot of companies. And of course we are going to ask Customs why they do this, and how long does it take, and why they feel it should be handled this way.

But at this point we are hearing what you say, and we will look into it further.

Now Mr. Thomas.

Mr. THOMAS. Briefly, could you give me a better understanding of your interaction with Customs, Mr. Caspers and Mr. Laden? They take a sample of the material they are going to test, say the 65-35 polyester, or the weight, and they ship it off to a laboratory?

Mr. LADEN. Recently I have heard that that process is underway in the port of Seattle. But the seizures we experienced last year, it was our understanding that the products were being weighed right there in the warehouse by an inspector carrying a portable scale.

Mr. THOMAS. OK, let us assume that is the case. What do they provide you with, either in written form or in verbal form, as to why and how you were in violation?

Do they indicate what they did and how they did it?

Mr. LADEN. Oh, no, sir.

Mr. THOMAS. Or do they just say you failed.

Mr. LADEN. You failed, you were 4.6 percent overweight, and there is no explanation of any procedures.

Mr. THOMAS. Have you tried to ask them what was the process you used?

Mr. LADEN. Absolutely.

Mr. THOMAS. Verbally or on paper?

Mr. LADEN. We wanted to make sure it was statistically sound. And as Mr. Caspers has alluded to earlier, we wanted to clone our procedure after Customs.

Mr. THOMAS. Sure, tell me what you are doing and we will do the same thing.

Was that written or verbal communications between Customs and Fingerhut?

Mr. LADEN. We had had several verbal lengthy meetings with Customs on that issue, both in Minneapolis and in Seattle, and in both cases, they refused to give us their weighing procedures, or even begin to tell us.

We said to them, if you have got 1,000 cartons, how many do you weigh? We need to know that. Are you just weighing one carton and multiplying it by 1,000, or are you just taking a statistically sound sampling of this product?

Mr. THOMAS. Could we look at your math to find out if it's correct?

Mr. LADEN. Correct.

Mr. THOMAS. And you received no response from them?

Mr. LADEN. None whatsoever. In fact, they adamantly refused.

Mr. THOMAS. Thank you, Mr. Chairman.

Chairman PICKLE. The Chair appreciates very much your coming for this testimony.

Before we break for lunch, Ms. Street, do you have any comment about the legality of these shipments, is it contrary to law, or can you comment on it, in your judgment?

Ms. STREET. We are not arguing that they are contrary to law. Our argument again is that we think Customs is taking an overly aggressive position in terms of the rights that were granted to it under the new section 1595, and we are having a hard time dealing with seizures under that section in terms of responding and getting Customs to give us any kind of answer even as to how we go about getting our goods released, what we must do to continue in the process.

Chairman PICKLE. All right, Mr. Frenzel is on the Trade Subcommittee, and he has shown a very definite interest in making corrections in the 1595 section.

Well, I want to thank you now. I want to say again to the witnesses and to the audience, we are going to recess now until 1:30. That gives us approximately 50 minutes.

I want to be sure that the inspectors who are going to be here, we will try to start promptly at 1:30. So the Chair will declare a recess now until 1:30.

[Whereupon, at 12:41 p.m., a luncheon recess was taken.]

AFTERNOON SESSION

Chairman PICKLE. The Chair would ask the subcommittee to come to order.

First I want to express my appreciation to the witnesses and others for being able to have a break here during this time. We will now proceed with panel number 3.

Panel 3 will consist of Mr. Patrick Smith, director of legislation, representative of the National Treasury Employees Union.

Mr. Smith?

Mr. SMITH. Yes, Mr. Chairman.

Chairman PICKLE. Then we have Mr. Frank Saraco, who is a senior inspector of the U.S. Customs Service.

Mr. Saraco is not here? Mr. Robison.

Mr. ROBISON. Yes, sir.

Chairman PICKLE. All right, you are representing your group then.

Then we have Mr. Robert Clark, representing the U.S. Customs Service, San Diego.

Mr. CLARK. Yes.

Chairman PICKLE. Then we have Mr. Kevin Fox, senior inspector, U.S. Customs Service, New York.

Mr. FOX. Yes, sir.

Chairman PICKLE. Then we have Mr. Pedro Rodriguez, senior inspector of the U.S. Customs Service, Miami.

Mr. RODRIGUEZ. It is Miami, sir.

Chairman PICKLE. It is Miami. Do we have an inspector from Seattle?

Mr. SMITH. Yes, sir, Mr. Robison.

Chairman PICKLE. All right. Well, we are glad to have you gentlemen here. And we appreciate your coming and your being willing to testify and give us a chance to ask questions of you.

I will ask then that Mr. Smith proceed as the first witness and I will call your name as we go along.

Please proceed.

STATEMENT OF PATRICK F. SMITH, DIRECTOR OF LEGISLATION, NATIONAL TREASURY EMPLOYEES UNION [NTEU]

Mr. SMITH. Good afternoon, Mr. Chairman. My name is Patrick Smith. I am the director of legislation for the National Treasury Employees Union.

At this point, Mr. Chairman, I would like to ask that my organization's statement be placed in the record.

Chairman PICKLE. Without objection.

Mr. SMITH. With me today, Mr. Chairman, are four NTEU chapter presidents and Customs inspectors: Bob Clark from San Diego; Kevin Fox from JFK Airport; Pedro Rodriguez from Miami; and Don Robison from Seattle.

The mandate of the U.S. Customs Service can be divided into two distinct missions. The first is an enforcement mission which includes drug enforcement, child pornography, and oversight of numerous other provisions of the Tariff Act of 1930.

Second, there is a commercial mission concerning the flow of merchandise across our borders, and the collection of duties and other charges.

These twin tasks must be accomplished in an environment of limited personnel, however. For example, while formal entries have risen 89 percent between fiscal year 1980 and 1988, the total commercial operation staff has grown only 6.7 percent.

Also, Customs spearheads our Government's efforts to stop the flow of illegal drugs across our borders. This requires an enormous expenditure of employees' time.

To help it overcome this great disparity between personnel and workload, Customs has turned to automation. Specifically, on February 1, 1984, Customs went live with the Automated Commercial System.

ACS is a computer telecommunications system linking participants in the exchange of international trade data. ACS is the umbrella program for a comprehensive network of information storage, retrieval, and exchange systems.

ACS contains a number of key modules including automated broker interface; automated manifest system; and cargo selectivity system.

ABI allows customs house brokers to interface directly with the Customs computer in order to transmit entry data. The broker, through ABI, is provided with the release status of entries, and is given access to several Customs data bases.

The AMS controls imported merchandise from the time the manifest is received until the control is taken over in some other segment of ACS. A manifest inventory is created from data provided by the carrier or port authority or service center to the Customs data center.

The cargo selectivity system determines the type of examination, intensive or general, which the ACS computer will call for.

The cargo selectivity system uses a national criteria file maintained by national import specialists, and the New York operations analysis staff, and local criteria maintained by local OAS units.

NTEU believes the intelligent integration of computers into the Customs workplace is necessary for the service to perform its mission in the late 20th century and beyond. However, many aspects of ACS and how it is being implemented need to be changed if Customs is serious about meeting its mission responsibilities in both the enforcement and commercial areas.

Customs has failed miserably in its efforts to train its people how to properly use ACS. In fact, in most instances, formal training has been nonexistent.

The software is inadequate to meet Customs' mission, and the hardware is often unavailable. Operating procedures under ACS exclude informal entries from virtually any review, thereby opening the door to enforcement abuse.

The cargo selectivity criteria is based on fraudulent examination findings, and is undermined by systemic flaws. ABI provides users an unfair advantage by enabling them to test the waters before review by an inspector, and AMS is replete with enforcement problems.

At the heart of Customs' problems with ACS is the service's failure to advise the system, which takes advantage of the skills and experience of its workforce. Customs has attempted to replace an experienced, dedicated core of inspectors and import specialists with computer programs.

It must instead devise a system which provides sufficient opportunities for those employees to interact with the various ACS modules so that the employees may more intelligently and more quickly perform their work.

The computer can be an excellent tool, and can serve as a collective memory bank, or facilitate communications among employees; but it should not instruct an inspector to inspect or release merchandise.

Such a directive is based almost entirely on historical data, ignoring the peculiarities of shipments which may cause an experienced inspector to conduct an intensive exam. That inspector should not have to move heaven and earth to exercise his or her good judgment.

The advent of computers into the workplace presumably is intended to free inspectors and import specialists from much of the time consuming drudgery of processing paperwork, and thereby speed the flow of merchandise. It is reasonable to conclude that if employees are freed from much of the work of processing paper entries, they should have more time to conduct hands-on examinations and audits.

Ironically, the current ACS system merely substitutes the drudgery of the computer terminal for the paperwork function, so no more inspections are being done under ACS then under the pre-ACS system.

In fact, at most sites, far fewer inspections are performed under ACS. This undermines the entire ACS, because the data upon which the selectivity system is based must be continually updated if it is to be valid, and the only reliable means of updating the data base is to conduct an adequate number of intensive exams and audits. There is no way around it.

Customs must verify by actually looking at the merchandise at a rate significantly greater than it does currently.

This may indeed require some additional personnel in commercial operations, but part of the time needed would become available if the ACS was functioning more effectively.

In addition, as we have stated above, NTEU believes the current data base upon which selectivity is based is a sham. So the system needs to conduct a number of catchup intensive exams.

Proper training of all personnel and modifications of existing ACS modules, after input from those employees using the system, will help ACS work more effectively.

Customs management is guilty of gross malfeasance for its failure to provide adequate training for all affected personnel, even to this very day. Proper training should be the first order of business.

Customs failure to acquire input from employees who are going to use this system, on the other hand, is the classic employer mistake. But it is not too late to correct it.

It is obvious the problems with ACS are numerous and complex. Neither NTEU nor its members pretend to have all the answers. But we do have many knowledgeable people within our ranks.

We propose working with Customs in a joint effort. Specifically, NTEU suggests that a task force composed of affected NTEU bargaining unit employees and Customs management be formed.

This group's mandate will be to address either directly or indirectly, with the help of outside expert advice, all the problems facing the service in its efforts to properly implement ACS.

NTEU believes that if Customs provides its many dedicated, knowledgeable employees an opportunity to participate, it will only enhance its ability to cope with the challenges ACS presents, and reach the potential ACS promises.

In conclusion, automation is necessary if Customs is to meet the challenges of the future. However, Customs ACS program is capable of meeting those challenges only if significant adjustments are made.

Far from being a resounding success whose benefits will be reaped by the next Commissioner, as described by current Commissioner Von Rabb, in an interview published in the Washington Post on August 24, 1986, ACS is the millstone with which the next Commissioner must swim the channels between Customs enforcement and commercial missions.

To successfully do so, it is imperative that the Agency avail itself of the expertise of its work force before decisions are made regarding the necessary adjustments to ACS.

[The statements of Mr. Smith and Robert M. Tobias follow:]

STATEMENT OF PATRICK F. SMITH, NATIONAL TREASURY EMPLOYEES UNION

The mandate of the United States Customs Service can be divided into two distinct missions. The first is an enforcement mission, which includes drug enforcement, child pornography and oversight of numerous other provisions of the Tariff Act of 1930. Secondly, there is a commercial mission, concerning the flow of merchandise across our borders and the collection of duties and other charges.[1]

These twin tasks must be accomplished in an environment of limited personnel, however. For example, while formal entries have risen 89% between fiscal year 1980 and 1988, the total commercial operations staff has grown only 6.7%.[2] Also, Customs spearheads our government's efforts to stop the flow of illegal drugs across our borders. This requires an enormous expenditure of employees' time. To help it overcome this great disparity between personnel and workload, Customs has turned to automation. Specifically, on February 1, 1984, Customs went live with the Automated Commercial System (ACS).[3]

ACS is a computer-telecommunications system linking participants in the exchange of international trade data. ACS is the umbrella program for a comprehensive network of information storage, retrieval and exchange systems. ACS contains a number of key modules, including automated broker interface (ABI), automated manifest system (AMS), and cargo selectivity system.

ABI allows customhouse brokers to interface directly with the Customs' computer in order to transmit entry data. The broker, through ABI, is provided with the release status of entries, and is given access to several Customs' data bases.[4]

The AMS controls imported merchandise from the time the manifest is received until the control is taken over in some other segment of ACS. A manifest inventory is created from data provided by the carrier, or port authority or service center, to the Customs Data Center.[5]

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[1] Statement of Commissioner William von Raab before the Treasury, Postal Service and General Government Subcommittee of the Senate Committee on Appropriations, February 26, 1988, p. 2.

[2] See Table #1.

[3] Office of Automated Commercial System Operations, Manager's Overview, U.S. Customs Service, p. 1.

[4] Ibid., p. 5.

[5] Ibid., p. 7.

The Cargo Selectivity System determines the type of examination (intensive or general) which the ACS computer will call for. The cargo selectivity system uses a National Criteria File maintained by National Import Specialists and the New York Operational Analysis Staff (OAS), and local criteria maintained by local OAS units.[6]

NTEU's POSITION AND RECOMMENDATIONS

NTEU believes the intelligent integration of computers into the Customs' workplace is necessary for the Service to perform its mission in the late 20th century and beyond. However, many aspects of ACS, and how it is being implemented, need to be changed if Customs is serious about meeting its mission responsibilities in both the enforcement and commercial areas.

Customs has failed miserably in its efforts to train its people how to properly use ACS. In fact, in most instances formal training has been non-existent. The software is inadequate to meet Customs' mission, and the hardware is often unavailable. Operating procedures under ACS exclude informal entries from virtually any review, thereby opening the door to enforcement abuse.

The Cargo Selectivity Criteria is based on fraudulent examination findings, and is undermined by systemic flaws. ABI provides users an unfair advantage by enabling them to "test the waters" before review by an Inspector, and AMS is replete with enforcement problems.

At the heart of Customs' problems with ACS is the Service's failure to devise a system which takes advantage of the skills and experience of its workforce. Customs has attempted to replace an experienced, dedicated corps of Inspectors and Import Specialists with computer programs.

It must, instead, devise a system which provides sufficient opportunities for those employees to interact with the various ACS modules, so that the employees may more intelligently and more quickly perform their work. The computer can be an excellent tool, and can serve as a collective memory bank, or facilitate communication among employees, but it should not instruct an inspector to inspect or release merchandise. Such a directive is based almost entirely on historical data, ignoring the peculiarities of shipments which may cause an experienced inspector to conduct an intensive exam. That inspector should not have to move heaven and earth (i.e. override the computer's call for a general exam) to exercise his/her good judgment.

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[6] Ibid., p. 13.

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This undermines the entire ACS because the data upon which the selectivity system is based must be continually updated if it is to be valid, and the only reliable means of updating the data base is to conduct an adequate number of intensive exams and audits. There is no way around it - Customs must verify by actually looking at the merchandise, and at a rate significantly greater than it does currently. This may indeed require some additional personnel in commercial operations, but part of the time needed would become available if the ACS was functioning more effectively. In addition, as we have stated above, NTEU believes the current data base upon which selectivity is based is a sham. So the system needs to conduct a number of catch-up intensive exams.

Proper training of all personnel, and modifications of existing ACS modules after input from those employees using the systems will help ACS work more effectively. Customs' management is guilty of gross nonfeasance for its failure to provide adequate training for all affected personnel, even to this very day. Proper training should be the first order of business. Customs' failure to acquire input from employees who were going to use the systems, on the other hand, is the classic employer mistake, but it is not too late to correct it.

It is obvious the problems with ACS are numerous and complex. Neither NTEU nor its members pretend to have all the answers, but we do have many knowledgeable people within our ranks. We propose working with Customs in a joint effort. Specifically, NTEU suggests that a task force composed of affected NTEU bargaining unit employees and Customs management be formed. This group's mandate will be to address either directly, or indirectly with the help of outside expert advice, all the problems facing the Service in its efforts to properly implement ACS. NTEU believes that if Customs provides its many dedicated, knowledgeable employees an opportunity to participate, it will only enhance its ability to cope with the challenges ACS presents, and reach the potential ACS promises.

CONCLUSION

Automation is necessary if Customs is to meet the challenges of the future. However, Customs' ACS program is capable of meeting those challenges only if significant adjustments are made. Far from being "the resounding success whose benefits will be reaped by the next commissioner", as described by Customs Commissioner von Raab in an interview published in the Washington Post on August 24, 1986, ACS is the millstone with which the next commissioner must swim the channels between Customs' enforcement and commercial missions. To successfully do so it is imperative that the agency avail itself of the expertise of its workforce before decisions are made regarding the necessary adjustments to ACS.

STATEMENT OF ROBERT M. TOBIAS, NATIONAL PRESIDENT, NATIONAL TREASURY EMPLOYEES UNION

INTRODUCTION

The United States Customs Service is this country's principal border enforcement agency, responsible for enforcing approximately 400 provisions of law, many of which are on behalf of more than 40 Federal agencies. The Service consists of 45 districts and areas, with about 300 ports of entry, supervised by 7 Regional Commissioners.[1]

Since its inception on July 31, 1789, Customs' mission has expanded beyond the mere collection of duties. Today, the Service is responsible for proper and timely execution of the following functions:

- "Assess and collects customs duties, excise taxes, fees and penalties due on imported goods.
- Prevents fraud and smuggling.
- Controls carriers, persons and cargo entering and departing the United States.
- Intercepts illegal high-technology exports to Soviet Bloc nations.
- Cooperates with other Federal agencies in suppressing the traffic in illicit narcotics and pornography.
- Enforces reporting requirements of the Bank Secrecy Act.
- Protects the American public by enforcing auto safety and emission control standards, flammable fabric restrictions, animal and plant quarantine requirements.
- Protects U.S. business and labor by enforcing regulations dealing with copyrights, trademarks and quotas."[2]

The above list of functions can be divided into two distinct missions. The first is an enforcement mission, which includes drug enforcement, child pornography and oversight of numerous other provisions of the Tariff Act of 1930. Secondly, there is a commercial mission, concerning the flow of merchandise across our borders and the collection of duties and other charges.[3]

These twin tasks must be accomplished in an environment of limited personnel, however. For example, while formal entries have risen 89% between fiscal year 1980 and 1988, the total commercial operations staff has grown only 6.7%.[4] Also, Customs spearheads our government's efforts to stop the flow of illegal drugs across our borders. This requires an enormous expenditure of employees' time. To help it overcome this great disparity between personnel and workload, Customs has turned to automation. Specifically, on February 1, 1984, Customs went live with the Automated Commercial System (ACS).[5]

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It must, instead, devise a system which provides sufficient opportunities for those employees to interact with the various ACS modules, so that the employees may more intelligently and more quickly perform their work. The computer can be an excellent tool, and can serve as a collective memory bank, or facilitate communication among employees, but it should not instruct an inspector to inspect or release merchandise. Such a directive is based almost entirely on historical data, ignoring the peculiarities of shipments which may cause an experienced inspector to conduct an intensive exam. That inspector should not have to move heaven and earth (i.e. override the computer's call for a general exam) to exercise his/her good judgment.

The advent of computers into the workplace presumably is intended to free Inspectors and Import Specialists from much of the time-consuming drudgery of processing paper, and thereby speed the flow of merchandise. It is reasonable to conclude that if employees are freed from much of the work of processing paper entries, they should have more time to conduct hands-on examinations, and audits. Ironically, the current ACS merely substitutes the drudgery of the computer terminal for the paperwork function, so no more inspections are being done under ACS than under the pre-ACS system. In fact at most sites far fewer inspections are performed under ACS.

This undermines the entire ACS because the data upon which the selectivity system is based must be continually updated if it is to be valid, and the only reliable means of updating the data base is to conduct an adequate number of intensive exams and audits. There is no way around it - Customs must verify by actually looking at the merchandise, and at a rate significantly greater than it does currently. This may indeed require some additional personnel in commercial operations, but part of the time needed would become available if the ACS was functioning more effectively. In addition, as we have stated above, NTEU believes the current data base upon which selectivity is based is a sham. So the system needs to conduct a number of catch-up intensive exams.

Proper training of all personnel, and modifications of existing ACS modules after input from those employees using the systems will help ACS work more effectively. Customs' management is guilty of gross nonfeasance for its failure to provide adequate training for all affected personnel, even to this very day. Proper training should be the first order of business. Customs' failure to acquire input from employees who were going to use the systems, on the other hand, is the classic employer mistake, but it is not too late to correct it.

It is obvious the problems with ACS are numerous and complex. Neither NTEU nor its members pretend to have all the answers, but we do have many knowledgeable people within our ranks. We propose working with Customs in a joint effort. Specifically, NTEU suggests that a task force composed of affected NTEU bargaining unit employees and Customs management be formed. This group's mandate will be to address either directly, or indirectly with the help of outside expert advice, all the problems facing the Service in its efforts to properly implement ACS. NTEU believes that if Customs provides its many dedicated, knowledgeable employees an opportunity to participate, it will only enhance its ability to cope with the challenges ACS presents, and reach the potential ACS promises.

OVERVIEW OF ACS MODULES AND IMPLEMENTATION OF ACS

NTEU bargaining unit employees across the country have expressed grave misgivings about many aspects of ACS which adversely impact on their ability to do their jobs. We will discuss below a few glaring examples of problems with the system itself and with its implementation; however, as we stated above in the "NTEU Position and Recommendations" section, the issues are complex, so an ongoing dialogue between employees and Customs is the best means of resolving many of these problems.

A. PROBLEMS INVOLVING IMPLEMENTATION OF ACS

1) Inadequate Training

To date, few Customs' employees have received adequate training on how to use the ACS hardware and software. Most training which occurs is ad hoc, on-the-job training in an effort to alleviate a crisis situation. One Inspector reported that when ACS was introduced there was a short training seminar given by the port. But the training consisted of watching a video tape of stills from Commissioner von Raab, and reading a pamphlet from the Commissioner, explaining what a great system ACS would be after input was given by the "experts". They concluded "training" with a discussion from a Senior Inspector who said the "experts" had completed their task, the system wasn't too great, but the employees had to live with it.

2) Software and Hardware Problems:

The ACS was installed without realistic testing. The system was installed without a trial period, or implementation in a limited area. Equipment was installed and left to sit until a deadline for implementation was announced. There were no "experts" on site to assess the attributes and failings of the system when it went live. To our knowledge, not a single software fault has been corrected to date. Some specific problems are:

a) The network of computers fails to facilitate communication among divisions within the Service, so, for example, the Inspector-Import Specialist team concept of enforcement is hindered.

b) The network does not manage the data bases available to Customs properly. As a result, employees are unable to interact with the machines (input and receive data) in the manner in which they must in order to make intelligent decisions concerning inspections and release of merchandise. For example, two essential fields of data are not required in the entry function and therefore cannot be used by the system for selectivity. Specifically, ACS does not require the volume or value of merchandise to be input into the system prior to selectivity determinations. Therefore a $1 shipment receives the same consideration as a $1,000,000 shipment and a one pound shipment is considered no differently than a one thousand pound shipment.

c) Often times there are simply not enough machines available. The lack of Customs' terminals at each facility requires that each problem be referred to the main station, causing additional freight delays. The bulk of machines are assigned to data transcribers (non-government, contract employees) and are used to input entries and are therefore unavailable for inspectors or import specialists to use for research functions. At many locations the computer terminals are in a separate facility miles from the examination site. The examining inspector has no opportunity to research the computer and go beyond whatever initial intelligence or examination results were given to him.

d) Brokers are allowed to make consolidated entries for numerous consignees. The broker enters oo-ooooo for the ultimate consignees IRS number. Thus the computer will never designate any of the individual importers as a first time importer or even as a suspect, since all such matchings are based on the importers IRS #. At Kennedy Airport brokers may make one entry for well over 30 importers by using the oo-ooooo.

e) The Manufacturers ID# (MID) is actually the shippers ID#. Thus an alert for a particular manufacturer or a commodity from a manufacturer in a particular country will not be recognized by the computer. For example, Seiko watches made in Japan and purchased from a middleman in Panama will have a manufacturer ID number indicating the Panamanian middleman not the Japanese manufacturer. This is particularly significant for quota goods that might be transshipped to a non-quota country.

3. Operating Procedure Problems:

a) Usually, under ACS, informal entries (generally entries valued at $1,000 and below) are simply waived through without an inspection. This procedure creates an obvious opportunity for enforcement abuse, and avoidance of the payment of duty.

For example, problems have been reported in the Miami area with regard to vegetables from Central America which have been sprayed with DDT or fertilized with human waste.

In addition, the potential revenue lost through undervaluation, or simply avoiding the scrutiny of an exam by undervaluation, is a problem. Although $1,000 is a small dollar amount, it can encompass a large volume of freight particularly from source narcotic countries such as Jamaica, Colombia, Mexico, Thailand. For example, 8000 lbs of baby bananas from Ecuador are entered with an import value of $600. Truckloads of produce on the SW border may qualify for informal entry. Under ACS, none of these shipments are likely to be examined.

b) In addition, formal entry is not required for American goods returned up to $10,000 value, non-commercial shipments, transportation in-bond, temporary importations, carnets and registrations. All these shipments by-pass the ACS computer. Because inspectors have been conditioned by ACS to release merchandise unless an exam is required, the vast majority of informal entries, traditionally a source for narcotics and other abuses, go unexamined.

c) Another operating procedure problem of ACS is that because there is no inspector on site and no computer record, the broker whose entry is examined and ordered corrected may simply file a duplicate entry. The chances of the same inspector reviewing or remembering, even if he did review the original entry, are slim. For example, where an examination of mutilated garment samples finds them to be not mutilated, the entry is returned to the broker for a formal entry. Instead of filing the formal entry, the broker files another informal entry. The odds favor the broker that it will be released without examination.

d) As day-to-day problems with the system occur, they are resolved on a case-by-case basis by the immediate or second level supervisor. Customs usually does not institutionalize the change into its operating procedure. The next time or place the same problem occurs it will not be solved in the same manner. Furthermore, Inspectors and Import Specialists are frequently caught between the different opinions of two supervisors. Therefore, one work station may not benefit from the work of another. This is characteristic of Customs' recent tendency to manage by crisis rather than by planning and foresight, so potential problems can be eliminated before they become real crises.

e) In New York, brokers are allowed to file entries for Newark, New York Seaport or JFK Airport at any of the three areas. Inspectors who do not work in those areas and are not familiar with the problems in those areas are asked to release or order for examination freight from those areas. However, because airway bills of lading differ significantly from ocean bills of lading, airport inspectors do not recognize errors in the ocean bills of lading. As a result, a great deal of time is spent correcting errors for entries filed in other areas. This also allows brokers to play entry "lotto." He may file entries at two or three sites and take the results he likes best and cancel the other entries.

f) Inspectors are signing the licenses required by other federal agencies (e.g., Department of State, FDA, Department of Agriculture) without examining the merchandise. In many cases they are authorizing the restricted movement of freight without determining the proper individual is actually taking possession of the freight. Take, for example, poppy straw, a controlled substance that requires a DEA permit to import. In the past an inspector was on site to see that the shipment was transferred by a proper agent of the permit holder. Today, a blank transfer is signed in advance.

In the past, in addition to recognizing other agencies interest in particular shipments, Customs assured that agencies requirements were met prior to Customs' release of the shipment. Now, as long as another agency is aware of the shipment, Customs will release the shipment if all Customs requirements are met even though DOT, FDA or the Bureau of Fish and Wildlife may place a hold on the shipment. The carrier can no longer depend on the Customs' inspectors release as evidence that a shipment has met all federal, state and local requirements.

g) There is no means of identifying when an inspector has reviewed an entry and released it. The computer will only tell that an entry was input by the data transcriber. If a general release was ordered, an inspector would review the general release and the entry documents, and then release the entry, or reject it, or override it to examination. An inspector might reject an entry if various entry documents such as an invoice, bond or packing list were missing.

On days with a backlog of entry reviews it would be impossible to tell if an inspector had reviewed and released a particular entry yet. Thus, "duplicate" releases could be given for entries that had been rejected or had not yet been reviewed.

4. Security Problems:

Because Customs has privitized the input of data into ACS, it has created a potential for security violations and privacy abuse. The data transcribers not only have access to information about the importer, they are able to see narcotics and other alerts that the computer has in its database. They have the ability to make hard copies of this information which could be invaluable to an narcotics smuggler or even to an importer interested in information about his competitors import activity. Currently, at JFK, the data transcribers are removing the original copy of the entry document (CF 3461) before an inspector has reviewed and signed it. Thus, they could discard an entry prior to review, and 24 or 48 hours later, Customs would assume the entry had been properly reviewed, and released. Customs would then issue a duplicate release.

B. CARGO SELECTIVITY CRITERIA

The cargo selectivity criteria is in most instances the determining factor in whether a given shipment is inspected or not. Unfortunately, the data within this system is based upon fraudulent examination findings. When the system went on line all importers were first time importers, however Inspectors were ordered to enter negative exam findings when, in fact, the merchandise was not examined. This was due in great part to the intense pressure from Customs' headquarters to implement the ACS as quickly as possible.

In addition to the fact that the selectivity criteria are probably invalid, one must also consider that the use of such a procedure has certain systemic flaws. If an entry is selected by the system for an intensive exam, it is done so based upon either the country of origin, the TSUSA (Tariff Schedule of the United State Annotated) classification, the identity of the Importer/Shipper, the fact that this is a first time importer, or because it was randomly selected (.7% of all shipments).

The TSUSA number can easily be entered incorrectly (either deliberately or accidently), and on certain commodities this may cause a quota or visa situation to be missed. As a result, further enforcement action such as Import Specialist review, Agriculture review and FDA notification will not occur. This problem is exacerbated by the fact that staffing limitations prevent checking the large volume of entries for classification accuracy.

Even when the system is operating as it should it often is not an effective enforcement mechanism. For example, there was an occasion in which the criteria entered into the system indicated an importer was a frequent violator, but the instructions given by the computer still indicated a general examination. Specifically, a directive for a "General-Document Review" recommendation was follwed by a narrative that stated "Exams of Importer's Shipments have found numerous violations involving quota and FDA restricted/ prohibited mdse. Multiple Seizures and Active OI Investigation ... "When importers with "numerous violations" only trigger a general examination, one must question who customs has targeted for intensive exams.

C. AUTOMATED BROKER INTERFACE

As noted in the "Introduction" section, a broker who uses ABI will receive release data from Customs when the entry is put into the system. This means the system tells the broker whether that shipment will be subject to an intensive exam or simply released (general exam) without inspection, subject to an Inspector override. But, because overrides are discouraged, the broker can usually rely on the system's directive being followed. Another fact of life within Customs which makes verification in the form of overrides an unlikely event is that Inspectors handling the paperwork in the Document Analysis Units (DAUs), have their hands full with simply pushing that paperwork through the system.

This provides a broker who wants to avoid inspections a tremendous advantage. He can "test the waters" by inputting incorrect data, and if the system calls for a general exam, merely proceed. However, if the system calls for an intensive exam, there is ample time for the broker to correct the entry before review by an Inspector. For example, a broker submits his entry which he knows has been designated for exam with a corrected value. He claims he inadvertently omitted an invoice. His corrected entry will now be examined and no discrepancies will be found. Had the entry come up general, one can only speculate on whether the corrections would have been made.

To put this in perspective, imagine if the IRS told individuals and corporations before they submitted their tax returns whether or not they would be audited.

D. AUTOMATED MANIFEST SYSTEM

Through AMS, carriers, port authorities and service centers electronically transmit data from inward bound vessel manifests to Customs. Customs uses this information to make decisions with respect to inspection and examination, and so informs the senders, their agents and others.[10] In Seattle, in the near future, ABI and AMS will interface. A broker will input an entry into his ABI Computer, and if the entry is ordered as a general exam by ACS, the broker will be notified that he has 10 days to pay liquidated duties. ACS then will notify AMS that the cargo is cleared by Customs and may be delivered. All of this will happen with no opportunity for a customs officer to override for examination or document review.

The problems with the use of AMS in this fashion are:

1. It is unrealistic to assume that all carriers will eventually accomplish 100 percent compliance with the requirement for full and accurate disclosure of the cargo. Currently, ships arriving in port still amend their cargo manifest long after the vessel has discharged its cargo and left for another port.

2. The manifest review capabilities of AMS are limited, and do not include the critical field "marks and

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[10] Federal Register, Vol. 53, No. 10, January 15, 1988, p. 1097.

numbers" as required by statute. Marks and numbers often disclose the actual origin of the freight, especially when the shipper is a freight forwarder.

3. Scanning capabilities are limited, and extremely slow due to system access time. Furthermore, the lack of ability to access both TECS (Treasury Enforcement Computer System) and ACS simultaneously means additional time wasted or two terminals tied up.

4. The ability to place system-wide holds on merchandise through the AMS system is overrated. It is unusual that your information would be that specific. And, because there are such a limited number of shipping companies currently enrolled in the AMS program, the odds are that the particular bills of lading would not be eligible.

5. The inability of AMS to generate a status report of cargo for each particular vessel, and the inability to generate a GO (General Order) report except on the actual GO date (Sundays included), limit the ability to use the automated database to audit the carrier and require the district to either trust the carrier's records or maintain the original historical records including "posting copies" of all releases. This negates any possible savings in manpower. (Note: Five working days after arrival of merchandise it must be transferred to a general order warehouse, if no entry has been filed for its release.)

6. Assuming that AMS becomes fully implemented, terminal operators will be forced to interface with many incompatible carrier systems, costing them additional money. Failure to do so would require them to maintain a "paper trail" on each release, negating any gain from computerization.

7. The ability of the person reviewing the automated manifest for enforcement data is already hindered due to lack of "marks and numbers." In addition, the ability of the carrier to delete bills of lading and make changes as desired often results in several bills of lading registered to the manifest before the proper information is displayed. Also, currently the electronic information submitted includes many instances where the consignee or notify party is not specific enough to profile, (i.e., consigned to a bank or freight forwarder). In instances where not even this information is displayed, we have the ability to hold the freight, but Customs has not displayed the "will" to do it. Unless this changes we cannot force even this minimal compliance, and if we do hold freight, we cause additional delay in the release of the merchandise. This could be unfair in that often the information we require is on the entry documentation already submitted and released by Customs.

CONCLUSION

Automation is necessary if Customs is to meet the challenges of the future. However, Customs' ACS program is capable of meeting those challenges only if significant adjustments are made. Far from being "the resounding success whose benefits will be reaped by the next commissioner", as described by Customs Commissioner von Raab in an interview published in the Washington Post on August 24, 1986, ACS is the millstone with which the next commissioner must swim the channels between Customs' enforcement and commercial missions. To successfully do so it is imperative that the agency avail itself of the expertise of its workforce before decisions are made regarding the necessary adjustments to ACS.

TABLE 1

MERCHANDISE ENTRIES AND COMMERCIAL OPERATIONS POSITIONS

FY 1980-1988

Fiscal Year	Formal Entries	Commercial Operations Positions (FTE)		
		Cargo Inspection Positions	Classification & Value Positions	Total
1980	4,374,000	5,108	4,082	9,190
1981	4,588,000	5,102	3,837	8,939
1982	4,703,000	4,693	3,748	8,441
1983	5,314,000	4,830	3,595	8,425
1984	6,421,000	4,842	3,541	8,383
1985	6,823,000	4,853	3,197	8,050
1986	7,251,000	4,824	3,031	7,855
1987	8,023,000	5,151	3,413	8,564
1988	8,264,000	5,996	3,807	9,803

NOTES:

1. Formal entries increased 89%; total commercial operations staff increased 6.7%.

SOURCE: U.S. Customs Service data.

Chairman PICKLE. Thank you. Mr. Smith, before I go on to the first inspector, I want to ask you, on page 3 you make the statement right in the middle of the page: "The cargo selectivity criteria is based on fraudulent examination findings, and is undermined by systemic flaws."

Now, that's a pretty harsh statement. Can you expand on that statement regarding how you arrive at it?

Mr. SMITH. I think it would probably help if one of the inspectors answered that question, because they were the ones who provided us with that data.

Chairman PICKLE. So you're making the statement, but you do so in consonance and after discussion with these inspectors?

Mr. SMITH. Yes, sir.

Chairman PICKLE. As we go along, then, I want you or some of the other inspectors to point that out. Because if you're making an accusation of that nature, we want to know how you arrive at it.

And since you are representing a union, you're representing the inspectors, you ought to know better than anybody what the status is.

All right. Now we will ask for Mr. Don Robison will be the first.

Mr. CLARK. We had talked an order right down the row, Mr. Chairman.

Chairman PICKLE. All right, Mr. Clark, we will recognize you first, then.

Mr. Clark is a senior inspector representing the Customs Service division in San Diego.

By the way, all you gentlemen's statements in their entirety will appear in the record as a matter of form.

STATEMENT OF ROBERT CLARK, SENIOR INSPECTOR, U.S. CUSTOMS SERVICE, SAN DIEGO, AND CHAPTER PRESIDENT, NTEU

Mr. CLARK. Yes, this is my own statement, written by me, stating what is occurring at the port that I work at.

Chairman PICKLE. All right. That will appear in the record. Now you can follow that statement by way of summary, or in any way that you wish to proceed.

Mr. CLARK. Thank you, Mr. Chairman.

My name is Robert Clark. I have been a Customs inspector at San Diego for 16 years. At our San Diego commercial facility we average between 400 and 500 truck entries a day. All of these are entered into the automated commercial system for examination. Ten percent of these are directed for intensive exams. Most of these intensive exams are based on either random selection, or the fact that an importer is a first-time importer. These exams are not based upon experience, intelligence, type of merchandise, and are generally uniformly nonproductive. They ignore a Customs inspector's training and judgment. If you, as an inspector, feel that this does not need an examination, you cannot elect, you cannot elect not to conduct an exam. You have two choices. You can either lie and say you have done an exam when you have not, or waste your time examining a bad shipment while a good suspect shipment goes up the road on a general examination.

The ACS program has not produced results. Since its implementation at San Ysidro in 1984, we have not found one load of narcotics in merchandise. Very few of ACS directed exams have produced merchandise seizures. In April we had 10 merchandise seizures. None of these were the results of ACS. Customs has also neglected to train inspectors in the use of ACS. Any training has been done informally on our own, and problems have developed in the area of security.

We are directed under threat of disciplinary action not to let any importers see any ACS printouts. The ACS printout entries, however, are entered by private, nongovernment employees. These employees routinely see these confidential printouts.

The main problem with ACS is that the system, as established, does not allow an inspector to utilize his judgment and training. This often forces an inspector to concentrate on shipments that do not need examination, and release shipments that should be examined.

ACS could be an effective tool for inspectors if the information used for examination criteria was more specific, based on documented past violations or current investigations, and inspectors were allowed to make the actual determination as to what type of an examination needs to be done.

Thank you.

Chairman PICKLE. Thank you, Mr. Clark.

Now we will ask Mr. Kevin Fox, senior inspector of the Customs Service in New York, to proceed.

Mr. Fox.

STATEMENT OF KEVIN FOX, SENIOR INSPECTOR, U.S. CUSTOMS SERVICE, NEW YORK, AND CHAPTER PRESIDENT, NTEU

Mr. FOX. Thank you, Mr. Chairman.

My name is Kevin Fox. I am a Customs inspector at JFK Airport in New York with 12 years experience. The Customs Service is in peril. It is being threatened by program oriented policy decisions that has devastated the morale of Customs employees; in particular, inspectors and import specialists, the frontline professionals entrusted with the duties of narcotics interdiction and trade regulation. The Automated Commercial System is the principal program that has led to a feeling that these employees no longer have a legitimate function, but are mere cogs in an inadequate system, subservient functionaries to a computer that has a data base, a foundation, that is totally false.

In New York the consensus is that Customs does not care about the wealth of experience possessed by inspectors and import specialists, but simply wants to push cargo through the system and have the program look good. We hear a lot of talk about the war on drugs and toughening trade enforcement. Yet 95 percent of the cargo that enters the Port of New York, enters the Port of New York without a Customs employee, without any Government official, knowing what it is, how much of it there is in the shipment, or what it is packed with.

Though significant media coverage of Federal indictments of organized crime figures in New York has given an appearance of in-roads on drug trafficker, Customs inspectors sit in front of computer terminals at documents analysis units at JFK Airport, while some of these reputed figures run bonded container stations and trucking outfits that receive freight from abroad released and transferred into their hands by the computer and the system.

We have a new program at JFK. Trade sensitive commodity teams that is attempting to seriously address Customs' responsibility toward enforcing laws regarding quota, visas, trademark and other commercial interests. This program has been somewhat successful because of import specialists and inspector skills, and despite the ACS; 95 to 98 percent of discrepancies and violations were due to employee overrides of computer decisions. They were able to do this because the line of goods they were dealing with, textiles, has become politically sexy, and Customs allowed them the time and facilities to function. But the nontrade sensitive commodities walk out the door. I would like to witness Customs explain to an American manufacturer that his line is not sensitive enough for protection.

There are many reasons for the failure of ACS, from specific software problems such as allowing Customs brokers to enter a zero consignee IRS number, which circumvents triggering any intelligence we may have on a particular importer, to the unrealistic and unrealized goals of faster service promised to the importing community.

But the bottom line is that human potential is being wasted as Customs commits suicide.

Chairman PICKLE. Does that complete your statement?

Mr. FOX. Yes, sir.

Chairman PICKLE. All right, now we have our next witness, Mr. Pedro Rodriguez, senior inspector from Miami. Mr. Rodriguez.

STATEMENT OF PEDRO J. RODRIGUEZ, SENIOR INSPECTOR, U.S. CUSTOMS SERVICE, MIAMI, AND CHAPTER PRESIDENT, NTEU

Mr. RODRIGUEZ. Thank you, Mr. Chairman.

My name is Pedro J. Rodriguez. I am a Customs inspector at Miami Airport and Seaport. I have 14 years of service with the Customs Service. I would like to address the problems with the Automated Broker Interface System in Miami.

The Automated Broker Interface, ABI, is running at Miami on an "honor system". The Miami district has given priority to those on the ABI system to the extent that brokers who can afford to be on the system are guaranteed releases within specified time limits. These guarantees preclude any careful review of such shipments primarily because of the sheer volume of entries that must be processed with the agency-imposed time limits.

Customs has devoted a tremendous amount of resources to the success of this problem, none of which recognize the manpower-intense efforts that are necessary to oversee it. The very nature of the problem demands attention to an astronomical amount of paperwork generated and requiring review. Thus, inspectors are primarily involved in the process of handling the vast volume of paperwork with no resources devoted to actual physical inspection. Quantities and merchandise classification are not verified because the system does not call for actual physical inspection except in very limited instances based on nebulous criteria inserted into the SELECT system by personnel with little or no actual field experience in the inspection area.

As a result fewer than one percent of perishable entries are examined. Normal inspectional requirements such as invoices in the national language, English, packing lists, et cetera, are not enforced. Such exigencies as computer downtime, staffing shortages or backlogged entries result in waivers of all entry review requirements in the feverish effort to meet the clearance time guidelines arbitrarily established by ABI brokers by the Miami district.

Chairman PICKLE. Thank you, Mr. Rodriguez. Now we have Mr. Robison, senior inspector.

Mr. ROBISON. I am from Seattle, Mr. Chairman.

Chairman PICKLE. All right, please proceed.

STATEMENT OF DONALD ROBISON, SENIOR INSPECTOR, U.S. CUSTOMS SERVICE, SEATTLE, AND CHAPTER PRESIDENT, NTEU

Mr. ROBISON. Mr. Chairman, my name is Donald Robison. I am a Customs inspector in Seattle with over 18 years of experience. In Seattle, we use the automated commercial system, ACS, and at present, an entry is prepared by a broker and given to Customs. A non-Customs person, a Kelly contract person, keystrokes all ACS data from the entry into the computer. The computer then indicates whether an intensive or a general examination is needed. If intensive, the examination information is attached to the entry and is passed to the exam section. A general exam response means that no exam is necessary, and it is sent from the computer to a Customs inspector for review. That officer may override to an intensive examination, based on his or her experience or knowledge.

A recent visit to the office responsible for gathering statistics to utilize ACS revealed that ACS selects 80 percent of the entries that are designated for intensive exam with Customs officers overriding from general to intensive the other 20 percent. From these figures, discrepancies are charted. ACS exams account for 69 percent of the discrepancies. Customs officer overrides account for the other 31 percent. Clearly, this input from the Customs Officer is a valuable asset.

Under a test program to begin in Seattle in July, ACS will interface with the Automated Manifest System, AMS. AMS is a program charging steamship companies with the responsibility of inputting all bill of lading information into a computer that is tied into the Customs computer. Under this system, when an entry is keystroked into ACS and comes up general, or no exam necessary, the AMS portion of the program will automatically release the cargo to the steamship company for delivery. Not only will Customs officers not be allowed to override this entry; the cargo will be authorized for delivery without any Customs officer even reviewing the entry documents in most cases. Under this program, all of the discrepancies found through Customs officer review will be lost.

After a 6-month test, Customs plans on using the Automated Broker Interface and a paperless entry. A Customs officer on site will never see any entry information either before or after the delivery is authorized.

If I may conclude, Mr. Chairman, I did want to make a statement here that all of the inspectors who are here carry out the policy that is set by the Customs Service; we don't set policy. So there may be some questions that are asked dealing with policy that we're not going to be able to answer.

Chairman PICKLE. I can understand that. And I understand why you would make that statement.

We are trying to find out now what is going on. When we have witnesses who make a statement that the ACS system is not working, and you make it as strongly as you have made it, then I think we need to ask, what is it we can do about it, and what should be done about it by this committee.

Now, Mr. Smith started out by making a strong accusation that Customs has failed miserably in its attempt to train its people how to properly use ACS. So that is an indictment you are making against ACS. You say we do not have trained personnel; that actual formal training is nonexistent.

Then you said the software is inadequate and the hardware is too often unavailable.

Then you made the statement that the cargo selective criteria is based on fraudulent examination findings?

Mr. SMITH. Yes, sir. That is what these gentlemen tell me.

Chairman PICKLE. And you are in effect saying that that is based on fraudulent finding?

Mr. FOX. Mr. Chairman, when the ACS came on line at JFK Airport, there was virtually no data base, even if you were a frequent importer, an IBM, a Bloomingdale's in New York, there was no data base.

To make the system work, to push things through, we lied about doing examinations.

Chairman PICKLE. Why did you do that?

Mr. FOX. We were instructed to do it. It was the policy when it came out, any first time importer should not be examined automatically as called for by ACS.

Chairman PICKLE. Did any one person instruct you to say that, to take that position?

Mr. FOX. No, sir, it was the policy, it was the port policy to do that. It went down from the regional commissioner, to the area director, to the on-line supervisors, who because of the volume of work we're doing at JFK, didn't have time to do examinations to create a data base for ACS.

We found this particularly annoying, since for 2 or 3 years before that, we were working under a program called ACCEPT, the acronym, and I cannot recall what it stands for, but basically, we were compiling a data base for about 2 or 3 years, painstakingly filling out what was called accept element reports on every examination we did for 2 or 3 years.

Customs decided not to use this. They simply discarded the information under the ACCEPT program. It came on line at JFK Airport, the busiest airport in the country, with no data base whatsoever.

What is in there now, the first few months, are total lies. We did 1 percent examinations of what we said.

Chairman PICKLE. I am shocked that you would actually be instructed not to take this positive step and that you are instructed by the Customs as a matter of policy, and we will try to find out why.

Mr. Clark has said that—and let me read here what you had stated to us—that the ACS program has not produced favorable results, and actually has been less effective.

Then you said Customs has neglected to train inspectors in this area:

> Any training has been informally done on our own and problems have developed in the area of security. We are directed, under threat of disciplinary action, not to let importers see any ACS printouts.
>
> The ACS entries are entered by private, non-Government workers, and these employees routinely see these confidential printouts.

Mr. CLARK. Yes.

Chairman PICKLE. So these contractor employees know, in advance, in effect, what they are trying to push through, and that will or will not be inspected?

Mr. CLARK. The importers do not know in advance what's going to come through. The private contract people, the people that Mr. Robison described as key strokers, do know in advance, and they could give that information out to anybody.

Chairman PICKLE. Actually, you are saying to me that, really, there are less inspections really going on now, and though the ACS could be an important tool, it is effective only if you can exercise some judgment before blindly carrying out what the computer tells you to do?

Mr. CLARK. Correct.

Chairman PICKLE. You have to be able to make some inspection. Are you prevented from making inspections now, other than what's selected by the ACS system?

Mr. CLARK. At San Ysidro we are prevented from taking an intensive examination, a directed exam, and utilizing our judgment, and not making that type of an examination. An example is, Sony is a MCLADR. They have a twin-plant facility in Tijuana. They bring 10 to 15 truckloads of TVs across a day. Last week, they, through a computer error, had to enter a new IRS number which is what the ACS system kicks out on.

So they were listed as a first-time importer. All first-time importers are directed to be intensive examinations, and we have to do some type of examination on them. I had 10 trucks come through that day from Sony.

I have been unloading them, off and on, for the last 3 months. I did not need to unload them all, but I did not have any choice but to do some type of examination on it, because I could not downright downgrade.

Chairman PICKLE. Well, I want to ask you people, and then I will yield to Mr. Schulze, but let me ask you, first: I would like each one of you witnesses to tell me what you specifically believe is the main problem facing Customs today, and if you will give me an example of why you think it is. I would like for you to tell us, what is the problem we have. What is the most difficult area that we need to address, and what changes should we make?

Now you people are in the field. You each have 15 to 20 years' experience. You are in a good position to tell us what the weaknesses are and what we can do about it? Mr. Clark, why don't you start off.

Mr. CLARK. Currently, one of the biggest problems that I am seeing with Customs Service is the high rate of turnover and the inability to maintain current experienced inspectors.

We, at San Ysidro, through the—with the assistance of Congress, we have greatly increased our staffing, or the number of inspectors that we have over the last year and a half, almost to double what it was, or on paper, to double what it was 2 years ago.

However, we are losing at least one-third of those inspectors by the time they finish their first year of training. They do not want to stay in Customs any more. You know, I have been there 16 years. This is my career. I am going to stay in Customs. But these other people, they are just—the burnout factor is so high, that they are leaving before they even discover what Customs is, and part of the reason is because the current managers, at the district level and above, do not care about their people.

All they are interested in is pushing statistics, and there is no human factor in Customs administration.

Chairman PICKLE. Do most of you gentlemen, in general, agree with that position? Mr. Fox, what do you think?

Mr. FOX. What stands out to me is is that Customs is ignoring its intended function for the glamour and headlines of narcotics interdiction. We are not going to dispute the importance of narcotics interdiction. Of course it should be the most vital thing we deal in, but it comes that narcotics is priority No. 1, and the weight of the next one is a thousand and one.

We hear complaints from the importing community, and we have to agree, we do not service the commercial interests that we are supposed to be doing. We do not pay anything but lip-service attention to the regulatory functions of the Customs Service, and ACS is an example of just instituting a system that will ignore our responsibilities.

I feel that Customs has to refocus on its intended mission and do a better job with its varied functions, besides narcotics interdiction, of which I think we are doing a decent job. But we have a lot of other functions that we are ignoring and giving lip-service to, and ACS is just an example of a program that they put in, and they sell to the importing community as giving better service when it gives worse, and all it does is ignore everything we are supposed to be doing in the commercial interest.

Chairman PICKLE. Mr. Smith, do you have anything to add?

Mr. SMITH. I will give the other inspectors a chance to speak, Mr. Chairman, but from a union institutional standpoint, I would say the biggest problem that we have with the Customs Service is their failure and inability to work and cooperate with the employees.

As an example of a cooperative effort, I am sure you are very familiar with, and other members of the committee are very familiar with Commissioner Gibbs, and the effort that we have going on with the Internal Revenue Service, which we also represent, and that type of an effort is a very cooperative effort, and if IRS were to implement some major system like this automated commercial system, they would have come to us first, sat down, and worked with both the employees, the supervisors, and some outside experts to come up with a system, which Customs really failed to do.

Chairman PICKLE. Mr. Rodriguez.

Mr. RODRIGUEZ. Mr. Chairman, through my observation in Customs, one of the main problem areas that the Customs Service has is training, training of management, training of the inspectors.

Customs does not have what is called by the private sector an organization to develop good managers. Therefore, this creates a problem of human relations within the upper and middle level of management.

I feel that another problem that we have with management is a lot of mismanagement, like, for example, in the ACS program is a lot of mismanagement. We are trying to do, or the Customs Service has tried to do more with less, with less manpower. We cannot do it.

Another area that we should be very concerned is the manpower area. These programs sometimes are developed as a tool, but instead of a tool, what they do, they establish a system, and ACS is right now a system, it is not a tool.

In the case of Miami, we have a lot of mismanagement as the ACS program. For example, less than 10 percent of the cargo is examined at the port, the seaport or the airport. We know that right now, we have a very weak area, Haiti. Presently, Haiti is a drug way station. In the last 3 months there has been an increase in the number of Colombians buying Haitian businesses to launder drug profits.

More than 40 percent of the Haitian freighters and small boats used in the Miami River are linked to smuggling activities involving drugs, or aliens. We know that less than 1 percent of the perishable cargo in the Miami River is examined. In addition, less than 10 percent, under the ACS program, is examined.

The Miami River is a challenge to our society. Therefore, the Customs' ACS program presently is not capable of meeting this challenge. Customs will meet this challenge only if significant changes or adjustments are made in the Miami River. We cannot resolve that problem with this program.

We should be more creative. Management should look at this situation to resolve this drug problem down in south Florida. Thank you, Mr. Chairman.

Chairman PICKLE. Thank you, Mr. Rodriguez. It is shocking to us to hear that less than 1 percent of the perishable cargo is actually examined in the Miami River, and less than 10 percent overall.

Now Mr. Robison.

Mr. ROBISON. Mr. Chairman, I'd like to expand a little bit on the training aspects. That is one of my pet peeves in the Customs Service. There was a statistic that was prepared by the Customs Service, that there were approximately 1,200 Customs inspectors trained to utilize the ACS system.

That is out of a work force of about 9,000 inspectors. I have over 18 years of experience and I have not been trained in ACS yet at all. What knowledge I have I gained on my own from talking to

OAS and other officers that are involved with ACS. I cannot even sign on to the ACS system. I do not have a password.

I am directly involved in the Treasury enforcement communications system, the TECS system that we have. I am the trained SCO for the district of Seattle, and when I left my training—I had a week's training in that area—I was told by the program officers with TECS that I was to go back to my area, and I was not to be the trainer. That would be done by the computer, which put the responsibility back on the managers to provide time for them to train themselves, basically.

And with the work force that we have, and the volume of work that we have in Seattle, there is not time and there is not equipment.

We talked about the ACS system. We have a centralized cargo system in Seattle at the harbor. The examinations, however, for the most part, are done at CESs or CFSs, and the computer equipment to access ACS information is not located at those facilities.

The entry is all set up and the examination criteria is placed on the forward part of the entry and then distributed to the CESs. The officers at the examination site cannot access information that is there. There are programs that are being developed by our operational analyst staff in Seattle, and nationwide, to develop programs that are inherent to the area that we live in, but there is no effort—that I can see yet—to transmit that information to the inspectors that are out in the field so that they can use the programs that OAS are building.

So in my estimation, training is one of our most serious problems. Thank you.

Chairman Pickle. I appreciate your statement. We have got a lot of other questions. I want to yield to Mr. Schulze at this point and then we will come back for further questions. Mr. Schulze.

Mr. Schulze. Thank you, Mr. Chairman. I would like to continue along the same line of questioning.

Mr. Clark, let's go back to your incident with the Sony trucks. As I understand it, because there was a new IRS number assigned to that establishment, that even though it was the same cargo, and almost the same trucks that go through on a routine basis, you were instructed by the computer to make an intensive search of each of those vehicles?

Mr. Clark. That is correct.

Mr. Schulze. Is there absolutely no process whereby you can put into that computer this is not new, it is just a new number, and I therefore am taking it upon myself to say that I am not going to inspect these vehicles?

Mr. Clark. No, there is no process to do that in the computer. Technically, under this system, as established, we are supposed to have the authority to go ahead and downgrade an intensive to a general, if we fill out a form, and if we go to the supervisor, and if we do this and if we do that.

And if you write an incident report in the process of doing it. But that takes time. You know, then it is easier not to do it.

Mr. Schulze. There is a set procedure, but it is so lengthy and complicated, that it is easier to walk out, open the back of the truck, and say I inspected it, than it is to do that?

Mr. CLARK. Absolutely.

Mr. SCHULZE. Can you provide us with a copy or a listing of the procedures that you must go through, or the forms that you must fill out, so that we have them.

Mr. CLARK. Yes.

Mr. SCHULZE. It seems to me that a common-sense approach would say we have to give the inspector some leeway. If, in his judgment or his years of experience, he wants to override this, then he either instructs the computer or puts on the bill of lading, or somewhere, "Override for reason of"—A, B and C, or 1, or 2 or 3, or whatever.

Now I can also see some advantages to random searches once in a while, but this does not sound like a random operation. This was a deliberate kickout.

Mr. CLARK. Yes. The random searches, I think the factor is something like 1 percent, or just under 1 percent is kicked out, random.

Mr. SCHULZE. I can understand why they would say to you, inspect one of those Sony trucks every 10 days or something like that.

Mr. CLARK. That makes sense.

Mr. SCHULZE. Yes. But it seems to me there has to be a way to override that kind of a basic error, and use your judgment.

Mr. CLARK. An easier way.

Mr. SCHULZE. I believe it was Mr. Fox who said that for 2 or 3 years they collected the data ahead of time, and then did not use it.

Now that shocks me and I want to make sure we check with those who made that decision to learn whether the decision to collect the data was made in an intelligent fashion, or if the decision to reject it was made in an intelligent fashion.

Because it seems to me somebody made a pretty poor decision somewhere along the line. If you are collecting data for 2 or 3 years, we, the taxpayers, are paying for it. Then to turn around and not use it is just an ignorant decision in my opinion.

So if you could give us a little notation on that, I would appreciate having it, because that concerns me.

[The information follows:]

Override Entry Exam Designation

```
SSAO
          OVERRIDE ENTRY EXAM DESIGNATION
                CARGO SELECTIVITY

DIST/PORT:----       ENTRY NO: --- --------

                CHANGE EXAM TYPE (G OR I): -

                DATE REL IF TO GENERAL ------

                     REASON TO GENERAL  -----
```

PURPOSE:	SSAO is used to override a general examination to an intensive or an intensive to a general.
<u>Steps</u>	Key in SSAO. Depress the 'enter' key. The screen will display Override Entry Examination Designation.
Dist-Port	System generated. Key over if other than sign-on port.
Entry Number	Duplicate the format used in original selectivity input.
Change/Exam	Key in "G" if change is to general; key in "I" if change is to intensive.
Date/Release	If override is from intensive to general, key in the date of release.

Reason	If override is from intensive to general, key in override reason code. Depress the 'enter' key. Screen display will verify the override.

This function may not be used to override an intensive examination for a first time importer or a random sample entry. Only a supervisory customs inspector is authorized to override a system generated intensive examination to general; the use of this function should be restricted to authorized personnel.

Override reason codes are listed online in the SLRL file with the reason indicator flag shown as "O". To see reason codes, key in SLRL and depress the 'enter' key.

```
SLRL                                          PRESS ENTER TO CONTINUE
                                  U.S. CUSTOMS SERVICE
                                      SELECTIVITY
                               ACS CRITERIA REASON CODES

REASON                              NARRATIVE                          CREATE  REASON
 CODE                                                                    DATE  INDICATOR

   ADCVD   COMMERCE DIRECTED AD/CVD CASE                              03/03/88   C
   AGRET   AMERICAN GOODS RETURNED                                    12/23/86   C
   ARFAC   AUTOMATIC RELEASE FACILITATION                             02/18/88   O
   CET     CET CRITERIA                                               12/17/86   C
   CLASS   CLASSIFICATION RISK                                        02/03/88   C
   COKEE   COCAINE INMFORMATION                                       12/15/86   C
   DANDR   OTHER DANGEROUS DRUGS                                      12/15/86   C
   DBLDF   DOUBLE DIFFERENCE PENDING                                  02/03/88   C
   DEVAN   DEVANNING RECORDS   (NEW YORK REGION)                      04/22/88   C
   DMPNG   ANTI-DUMPING & COUNTERVAILING DUTIES EVASION.              12/23/86   C
   ENTRY   ENTRY REQUIREMENTS/C&V REVIEW NECESSARY                    12/23/86   C
   EPICC   INFORMATION FROM OAS ASSIGNED TO EPIC                      03/04/88   C
   EXNOT   EXAM NOT PRACTICAL (WITH SUPERVISORY APPROVAL)             12/15/86   O

                                                                   MPP= CPPL4006
KEY 1 = REASON CODE                                                MSK= CMKL4002
SLRL                                          PRESS ENTER TO CONTINUE
                                  U.S. CUSTOMS SERVICE
                                      SELECTIVITY
                               ACS CRITERIA REASON CODES

REASON                              NARRATIVE                          CREATE  REASON
 CODE                                                                    DATE  INDICATOR

   FIRST   FIRST TIME IMPORTER ONLY/NO DEROGATORY CRITERIA            12/15/86   O
   HASHS   HASHISH INFORMATION                                        12/15/86   C
   HQDIR   HEADQUARTERS DIRECTED ACTION                               02/03/88   C
   HROIN   HEROIN INFORMATIONN                                        12/15/86   C
   HWORK   HEAVY WORKLOAD (WITH SUPERVISORY APPROVAL)                 12/15/86   O
   IAPEN   INTERNAL ADVICE PENDING                                    02/03/88   C
   INSKN   INSPECTORS KNOWLEDGE OF IMPORTER                           12/15/86   O
   INVCR   INVALID CRITERIA                                           12/15/86   O
   ISBLZ   IMPORT SPECIALIST BLITZ                                    02/03/88   C
   MARIJ   MARIJUANA CRITERIA                                         12/15/86   C
   MKING   MARKING:C/O/FIBRE CONTENT/WOOL PRODUCTS/FUR LABEL.         12/19/86   C
   MONEY   CURRENCY RELATED SUSPECTS AND VIOLATORS                    01/12/87   C
   MULTI   MULTIPLE ENTRIES (MULTI CONTAINER SHIPMENT)                12/15/86   O

                                                                   MPP= CPPL4006
KEY 1 = REASON CODE                                                MSK= CMKL4002
SLRL                                          PRESS ENTER TO CONTINUE
                                  U.S. CUSTOMS SERVICE
                                      SELECTIVITY
                               ACS CRITERIA REASON CODES

REASON                              NARRATIVE                          CREATE  REASON
 CODE                                                                    DATE  INDICATOR

   NACRT   INAPPROPRIATE CRITERIA FOR EXAM                            12/15/86   O
   MIS     TSUSA CONVERSION TO HARMONIZED CODE                        08/14/87   C
   NRUNK   NARCOTICS/UNKNOWN                                          12/15/86   C
   OTAGY   OTHER AGENCY GENERATED CRITERIA                            12/15/86   C
   PPRLS   PAPERLESS ENTRY ALLOWED FOR IMPORTER                       05/14/87   C
   PROFR   PROTEST FURTHER REVIEW PENDING                             02/03/88   C
   PROHB   PROHIBITED AND/OR RESTRICTED MERCHANDISE                   12/15/86   C
   QUTVS   QUOTA AND/OR VISA PROBLEMS OF ANY NATURE                   12/15/86   C
   TMKCR   TRADEMARK AND/OR COPYRIGHT PROBLEMS                        12/15/86   C
   TRISU   SIGNIFICANT TRADE ISSUE(VRAS,COFFEE,EXCL.ORDER,ETC         02/03/88   C
   TSUSA   SIMILAR TSUSA                                              12/15/86   O
   UNINV   UNINVOICED/UNDECLARED MERCHANDISE                          12/23/86   C
   UNVAL   UNDERVALUED MERCHANDISE                                    02/09/87   C

                                                                   MPP= CPPL4006
KEY 1 = REASON CODE                                                MSK= CMKL4002
SLRL                                         END OF DATA REACHED
```

NATIONAL TREASURY EMPLOYEES UNION
CHAPTER 105
P.O. Box [illegible]
San Ysidro, CA 92073

March 10, 1989

Mr. Thomas Arnold
Commitee on Ways and Means
Subcommiteeon Oversight
U.S. House of Representatives
Washington, D.C.

Dear Tom,

I'm sorry for the delay in getting these documents to you, it took longer than I thought to try and chase down written procedures on overides. As you can see there is not a whole lot. I have the District ACS Co-ordinator trying to get me copies of any other Customs manuels or Directives on overide procedures but she has not had any luck so none may exist. If she turns anything else up I will forward them to you.

To reiterate San Diego District policy, only Supervisors have the authority to autherize an overide of the ACS criteria. At first only Supervisors had the ability to access the ACS overide screen. Now some Senior Inspectors have that ability, but still must have a Supervisors approval prior to changing the ACS code. Please let me know if I can be of any other assistance.

Sincerely,

Bob Clark

Bob Clark

ORIGINATING OFFICE: IC:C

DISTRIBUTION: See signature page'

POLICIES & PROCEDURES MANUAL

CUSTOMS DIRECTIVE

NUMBER: 1400-16

ISSUE DATE: FEBRUARY 24, 1989

SUBJECT: ACS SELECTIVITY SECURITY PROCEDURES

1. PURPOSE

To provide Customs employees with uniform guidelines concerning the dissemination of ACS Selectivity information and ACS Selectivity criteria.

2. BACKGROUND

Imported merchandise is subject to Customs examination before it is released into the commerce of the United States. The Cargo Selectivity System in ACS provides the inspector or import specialist with an advisory indication of the type of examination (intensive or general) for imported merchandise.

The type of examination is based upon ACS Cargo Selectivity criteria. National criteria is developed, created, and maintained by the National Import Specialists (NIS) and the New York Operational Analysis Staff (OAS) located in New York, while local criteria is the primary responsibility of local OAS units. Cargo Selectivity criteria is an assessment of risk by importer, TSUSA/Harmonized Code, country of origin, and the foreign manufacturer. Historical data and the first time relationships between those risk factors are also part of the established risk assessment.

The criteria which have been entered into ACS are used to flag certain imported merchandise subject to a more intensive examination than other merchandise. The information is used for predominantly internal purposes. It is designed to establish procedures and guidance for agency personnel (i.e., law enforcement investigatory techniques). While it involves no "secret law" of the Customs Service, public disclosure of such information would risk circumvention of U.S. laws and regulations.

Recently, it has been noted that Customs field personnel at several ports of entry are advising importers that company names, associated foreign shippers, or TSUSA/Harmonized Code designations are in ACS Selectivity and this fact is the reason for intensified examinations. Disclosure of this type of information is totally inappropriate and must be terminated immediately.

Customs Form [illegible]

U.S. G.P.O. 1989-496-101/80412

All employees and contract personnel should be aware that if a system or file is audited and found being used for personal or unauthorized use, the responsible individual may be subject to appropriate disciplinary actions. Title 18 of the United States Codes, Section 1030, provides for specific penalties associated with violation of Public Law 98-473. A person found guilty of violating certain sections of this Act can be fined up to $100,000.00 and imprisoned for up to 20 years, or both.

Consequently, any employee or contract employee is required, according to Section 51735.2J of the Policies and Procedures Manual, to promptly report any knowledge they may have or any allegation or information they may receive concerning the possible violation of any law by any Customs employee to the Assistant Commissioner, Office of Internal Affairs, or the appropriate Regional Director, Internal Affairs. Failure to provide information to Internal Affairs may result in administrative action in accordance with the applicable table of offenses.

3. PROCEDURES

Inspectors and other Customs officers must not disclose to the public any information from the ACS Selectivity criteria data base. Customs personnel must neither confirm nor deny the existence of an ACS Selectivity criterion record to the public. As a step towards securing ACS Selectivity information, all ACS Selectivity print-outs have been marked "Official Use Only." This information must be protected as outlined in the Customs Handbook No. 1400-01/June 1984, Safeguarding Classified Information. Information concerning the local or national nature of a selectivity criterion must also be withheld from public disclosure. This is necessary to circumvent opportunities for port shopping.

All field inquiries should be immediately referred to the line supervisor. Persons requesting information about ACS Selectivity may simply be advised that Cargo Selectivity is a module of the Automated Commercial System (ACS) and is used as a tool to assist the inspector, and other Customs personnel, in designating cargo for Customs examination. The System is used to enforce U.S. Customs laws, as well as the laws of over 40 other U.S. government agencies, such as the Department of Agriculture, the Food and Drug Administration, and the Fish and Wildlife Service. Customs will continue to examine selected cargo shipments to ensure compliance with trade laws and regulations and to inspect for the purpose of interdicting contraband.

The office of the port or district/area director may also be contacted to attempt to satisfy the importer's inquiry. The district director may instruct the local OAS unit to research the importer in question and determine the validity and effectiveness of the existing criteria.

At no time should an ACS Selectivity criterion be altered or removed based solely on an inquiry or request from the public. Existing criteria should be reviewed and only changed if the originating office or OAS unit determines a need to change the criteria exists. This decision must be based on an evaluation of the criteria or the presence of additional or new information.

Procedures for responding to written requests from importers or their agents on ACS Cargo Selectivity criteria are contained in Customs Directive 1400-17. As stated in the referenced Directive, local issues will be handled by the district director using the OAS as his source for formulating replies. Inquiries concerning national criteria may be forwarded to the National OAS in New York for a response.

Freedom of Information Act requests or questions of legal consequences resulting from unauthorized disclosures must be referred to regional counsel. Regional counsel may refer these questions to the Chief, Regulations and Disclosure Law Branch, Headquarters.

4. RESPONSIBILITIES

District/area directors are to insure that the Customs policy regarding the disclosure of ACS Selectivity criteria information is disseminated to all Customs officers under their jurisdiction. District directors must also ensure that contract personnel used for ACS data transcription are made aware and understand the requirements of this Directive. Local OAS units and the National OAS Unit in New York will be responsible for answering inquiries made by Customs management concerning ACS criteria. Additionally, OAS units are responsible for adequately and appropriately maintaining the ACS Selectivity criteria data base. The Assistant Commissioner, Inspection and Control will insure that each written inquiry is appropriately researched and responded to in a timely manner. Regional counsel are responsible for providing legal advice and expertise to the operational personnel involved in ACS Selectivity criteria security.

This Directive will become effective upon receipt.

William von Raab
Commissioner of Customs

Distribution:
R-01 Regional Commissioners
R-02 Regional Counsel
R-04 ARC's (Operations)
R-05 Regional Director (IA)
R-09 D/ARC's (I&C)
F-01 District/Area Director
F-02 Port Director
F-11 Operational Analysis Staff
G-19 All Customs Inspectors

This issuance contains information that may be exempt from the public and therefore should not be released without approval by the Director, Office of Cargo Enforcement and Facilitation, Office of Inspection and Control, Headquarters.

Mr Martin copy sent to Barge [redacted] OPM file

ORIGINATING OFFICE: IC:C

DISTRIBUTION: See signature page

POLICIES & PROCEDURES MANUAL

CUSTOMS DIRECTIVE

NUMBER: 3550-30

ISSUE DATE: JULY 21, 1988

SUBJECT: First Time Importer Override Procedures

1. PURPOSE

To transmit procedures for use of the First Time Importer (FTI) Override capability within ACS Cargo Selectivity.

2. BACKGROUND

Since the inception of the Cargo Selectivity system, and before that ACCEPT, there has never been the opportunity for inspectional personnel to override a systems generated FTI designation. The inability to perform such overrides was mandated by the necessity to examine all FTI shipments to assure compliance with Customs laws and regulations.

Recent trends in narcotics smuggling techniques and familiarity, by some, with Customs automated processes have made it necessary for Customs to redefine the requirement to examine all cargo with a FTI determination, the first time. The ability to waive a FTI designation for a first time occurrence removes a measure of predictability previously associated with FTI examinations.

3. ACTION

Effective June 13, 1988, it is now possible to waive the (FTI), soon to be the First Time Consignee (FTC), examination requirement, up to five times. This enhancement is being provided to remove the predictability of a FTI/FTC designation and to give managers the latitude to waive a FTI/FTC examination designation if existing workload requirements do not permit the examination. Any attempts to waive a FTI/FTC examination for a sixth time, however, will result in an on-screen systems message informing the user that an examination of the merchandise is mandatory.

As with all overrides of an INTENSIVE to GENERAL, supervisory approval will be required. In order to provide an audit trail, the [redacted] from FTI/FTC to GENERAL, and this copy will be attached to the CF 3461 and included in the appropriate batch sequence file.

Customs managers and inspectors are to be reminded to exercise judicious use of this new override capability. This enhancement in no way relieves inspectional personnel from conducting high quality cargo examinations for FTI/FTC and all other cargo designated as INTENSIVE.

U.S. G.P.O 1988-496-101/80146

JUL 20 1988

4. **RESPONSIBILITIES**

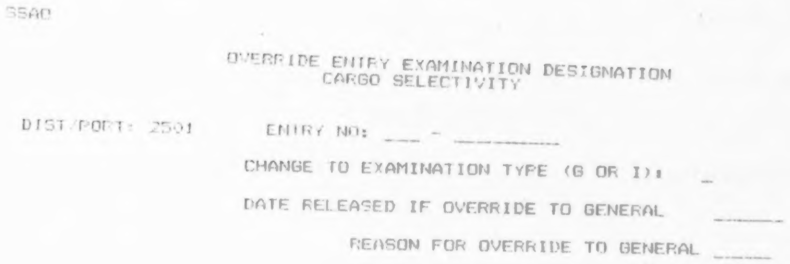
Regional commissioners, district, area, and port directors are responsible for assuring that the measures outlined in this Directive are met.

5. **EFFECTIVE DATE**

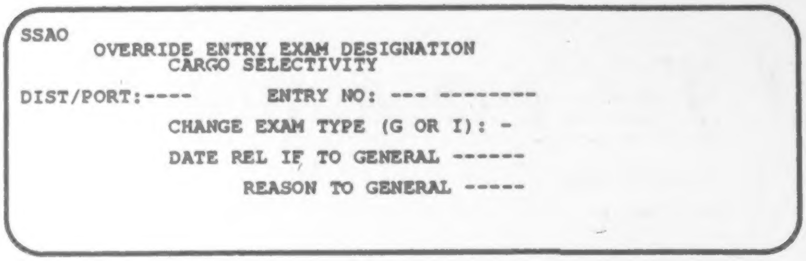
Immediately.

Assistant Commissioner
Office of Inspection and Control

Distribution:
R-01 Regional Commissioners
F-01 District/Area Directors
F-02 Port Directors



```
SSAO

                   OVERRIDE ENTRY EXAMINATION DESIGNATION
                           CARGO SELECTIVITY

 DIST/PORT: 2501       ENTRY NO: ___ - _________

                     CHANGE TO EXAMINATION TYPE (G OR I):   _

                     DATE RELEASED IF OVERRIDE TO GENERAL    ______

                              REASON FOR OVERRIDE TO GENERAL ____
```



```
SSAO
     OVERRIDE ENTRY EXAM DESIGNATION
           CARGO SELECTIVITY
DIST/PORT:----        ENTRY NO: --- --------
           CHANGE EXAM TYPE (G OR I): -
           DATE REL IF TO GENERAL ------
                REASON TO GENERAL -----
```

PURPOSE:	SSAO is used to override an entry from a general examination designation to an intensive or an intensive to a general.
<u>Steps</u>	Key in SSAO. Depress the 'enter' key.

The screen will display Override Entry Examination Designation.

Dist-Port	System generated. Key over if other than sign-on port.
Entry Number	Duplicate the format used in original selectivity input.
Change/Exam	Key in "G" if change is to general; key in "I" if change is to intensive.
Date/Release	If override is from intensive to general, key in the date of release.
Reason	If override is from intensive to general, key in override reason code.

Depress the 'enter' key. Screen display will verify the override.

Mr. SCHULZE. Because No. 1, if the data is collected—I think you are right, that it would be an ideal base to use. But if they spent that time and effort collecting it and then not to utilize it was just foolish.

Do you have any idea why it was not used?

Mr. CLARK. None whatsoever. What I am told is that however they developed the software, it was not going to be compatible to put into the system, which sounds silly to me, because it seems like you can alter whatever information you have.

And you are totally correct. Not only was it 2 or 3 years of work; it is 2 or 3 years of my time not spent doing inspections, filling out forms, and a cumbersome form to fill out on this data.

Mr. SCHULZE. It says to me, whoever made that decision must be either totally incompetent, or ignorant, or just did not know what they were doing. I would like to try to find out who made that decision and when. That is why I am asking this question.

Mr. FOX. The program was called Accept.

Mr. SCHULZE. Accept. Yes. Okay.

Chairman PICKLE. Mr. Schulze, would you yield.

Mr. SCHULZE. Sure.

Chairman PICKLE. I am going to have to step out of the room. But before the panel finishes, I wish you would ask them the question—well, I will ask the question.

If you were a smuggler, and you wanted to smuggle in some watches or drugs, or any kind of contraband, how would you go about it?

Each of you may have your own ideas. I am not asking you to divulge trade secrets that would be an open invitation to the smugglers to start practicing.

But you are the only people we can rely on, really, about are we doing a good job, and what else should we be doing.

So as you go along answering questions for Mr. Schulze, I want you always to come back and tell me, again: where is the biggest weakness we have got in the actual handling of these goods and the cargo?

So Mr. Schulze, will you ask them that question?

Mr. SCHULZE. I would be delighted to, Mr. Chairman. Perhaps we ought to do that in closed session if we are going to get down into details. [Laughter.]

Chairman PICKLE. I will leave that up to you.

Mr. SCHULZE. Yes. If you would like to bring out weaknesses along the way, or send us, in writing weaknesses you view, which you would rather not state in a public forum, or ways in which you would correct the system.

I believe it makes common sense, that if we are going to bring computers into the Customs structure, with its massive amount of paperwork and logistics, then it could be a great tool to free up the inspectors to do the job which they do best. But it sounds like that is not happening. If you have some recommendations on how we can do that, we would appreciate having them.

Now, Mr. Fox, in your statement, you said that despite ACS, 95 to 98 percent of discrepancies and violations were due to employee overrides of computer decisions.

Describe for me discrepancies. How is that term used? I think Mr. Robison or Mr. Rodriguez used the same. Tell the committee what you mean by "discrepancies".

Mr. Fox. It could be undervaluation of goods. It could be misclassification of goods. It could be false visas. It could be wrong country of origin listing, fraudulent invoice listing.

Mr. SCHULZE. Any kind of either intentional or unintentional deviation from the normal procedure, is determined to be a discrepancy?

Mr. Fox. Right. A discrepancy. The major ones would result into a seizure.

Mr. SCHULZE. Well, Mr. Clark, while we are still on that end of the table, let me ask you this. You stated that ACS has not produced results in San Diego, and that we have not found one load of narcotics in merchandise.

Have you found narcotics in other areas, as a result of individual actions?

Mr. CLARK. At our commercial facility, the only—well, in the 16 years that I have been there, I can think of one shipment, in merchandise, about 10 years ago. We have found empty trucks with compartments in them at the commercial facility that have been, but that is been either based on intelligence or it is based on an inspector's judgment of going out and looking at a truck and knowing that instead of 40 feet deep it is only 35 feet deep.

Mr. SCHULZE. So that——

Mr. CLARK. Basically we do, really—it is the other side of the coin from some of these other ports, because I understand, for instance, in Houston, they do not—they have recently been directed not to, though I have not seen this in writing—they have not been directed not to examine any general examinations.

At our port we examine a lot of general examinations, but we do it in a relatively hurried superficial way because they are looking for statistics and they are uniformly non-productive.

You talk about how to smuggle. An example that supposedly is in intelligence is they are bringing small amounts of, pound-size amounts of hard narcotics through tomato shipments, shipments which are palletized or in boxes.

Well, a tomato truck comes in. We will do an examination. We will have them bring a forklift in and pull off 5 or 6 pallets.

We will walk in. We will look at the truck, look at the pallets. That is an exam, it is an intensive exam. I can even count the number of pallets. I do not know what's in the pallets, inside the boxes, but it is an examination.

Those are the type of examinations that we are doing, and, you know, we are not really given a free enough rein.

Mr. SCHULZE. Mr. Clark, are there times when you are doing that when you have a feeling that you would like to open every box in the load, and you are——

Mr. CLARK. I would only want to open every box in that load if I had some hunch that there was narcotics in it because that is just time-consuming.

To do that, we have a fair number of inspectors working in the facility, about 10 on the dock, but that just takes too much time, and there's no way it can be done because we are under such pressure to keep—I would like to be able to concentrate on that truck but I cannot because there's 10 other trucks out here that I have to do something to.

Mr. SCHULZE. How about the utilization of technology? Is there a way, through sonic inspection, or x ray inspection, that large portions of shipments can be inspected at one time?

Mr. CLARK. We, at one time, had an x ray machine at San Ysidro that we were running small packages through. That was in the mid-1970's. That kind of just dropped off through lack of funding and they did not have an operator to run it. It was finally sold for scrap.

Customs is actively pursuing technology and they have a research and development department, and they have come up with such things as heat sensors to tell the difference in that, and some types of sonic devices, but they are just either in an experimental stage or not widely used.

Mr. SCHULZE. Does industry utilize any of these techniques?

Mr. CLARK. I do not really know the answer on that one.

Mr. SCHULZE. Thank you. Inspector Rodriguez, you said that less than 1 percent of the boats coming up the Miami River are inspected, and they are often small boats.

Would a large freighter coming into the Port of Miami have a higher statistical chance of being inspected than a small boat coming up the river?

Mr. RODRIGUEZ. Congressman, the Miami River is highly patrolled by the Coast Guard—I know that—but there's a lot of cargo coming from Colombia, South America, Central America. My concern, or our concern is, that under ACS we are checking the minimum. We need to check cargo, and quantity verification of cargo. Under the ACS program we do not have quantity verification, what is called AQV.

Mr. SCHULZE. And the Coast Guard does not do that?

Mr. RODRIGUEZ. No, sir.

Mr. SCHULZE. The Coast Guard checks for drugs only?

Mr. RODRIGUEZ. That is correct, sir.

Mr. SCHULZE. When these small boats come in, tell me how the procedure works. They send the bill of lading ahead. Do they have to stop at a certain place to clear Customs? Tell me, physically, how that works.

Mr. RODRIGUEZ. We have a super branch and a station at the river. Most of the time is one inspector. The inspector goes out on call for boardings, and sometime on ladings. On the river we do not have enough manpower because the volume of cargo at Miami is so big in the last 6 months due to the devaluation of the dollar, we have an increase of 40 percent.

We do not have the manpower. Management says they do not have the manpower to take care of that station. We should have more inspectors with weapons at the river.

Mr. SCHULZE. Do the boats stop? How do they know to stop at that inspection station?

Mr. RODRIGUEZ. They have agents. They notify seaport headquarters as to the time of arrival for the aliens. Then we go down there and do the boardings and entry, and take care of the——

Mr. SCHULZE. Do they go to their destination or do they come to the Customs station?

Mr. RODRIGUEZ. They come at all times—night, daytime.

Mr. SCHULZE. Do they go to the destination where they are going to unload their cargo, or do they come to the Customs station?

Mr. RODRIGUEZ. No, sir. They go to their destination. They have different companies, agents, and they relay the cargo at that location.

Mr. SCHULZE. So that could be almost anywhere up and down the river, correct?

Mr. RODRIGUEZ. That is correct.

Mr. SCHULZE. How many of those boats never present bill of ladings, never notify that they are coming in. Is there any of that?

Mr. RODRIGUEZ. I do not have the statistics, sir, but is known in the past that they try to come through and not to report to Customs. We have cases.

Mr. SCHULZE. Thank you. Gentlemen, when a Customs inspector opens the door to the container, it is usually in the rear. I would presume, especially if you have a large load, that what you do is look at the merchandise or whatever that is being shipped in the rear. Then you have to assume that the rest of it is like that.

If it says 3,000 television sets and it is a wall of television sets, you have to pretty much assume the whole load is TV sets unless you are going to back that truck up, pull it aside, and pull off the pallets.

Would it be of benefit to you if we mandated other apertures, other ports in such containers and/or truck bodies, so that you could either remove a panel, open a portion of that container to look at other sections? Or do you think that illicit or illegal operations are going on, and they are sophisticated enough so that they would just cover that area as well?

Do you have any thoughts on the topic? Are there ways we could make inspection easier and more quicker, and yet allow you to do a more thorough job?

Mr. CLARK. Yes the idea of putting extra doors in or apertures in the front or on the sides could be effective. It could make compartments in there, and you might not be able to get into it; but at least it is there.

And we have had some trucks to come through and because they got tired of having them load all the time, they have gone ahead and done that and cut sections of the walls out so that you can kind of see around it.

Another possibility is, in some of the large—well, I saw a catalog on some equipment that the industry does have regarding palletized tractors and offloading facilities, where the pallets or the merchandise is on rails in the truck, and then it just backs up to the dock, and it is kind of like a train connector, and they they just pull the whole thing out.

And we were trying hard to get as many people that bring in large merchandise as possible to palletize, because that does make it at least easier and quicker to get the trucks in and out.

Mr. SCHULZE. How do you verify that a container has inside of it what the bill of lading says is inside of it? How do you know that something else is not in there?

Are there any other ways other than physical inspection for you to determine the actual cargo of the container?

Mr. CLARK. I don't believe there is another way other than physical inspection?

Mr. SCHULZE. So you have to see them, that is the only way to really verify them?

Mr. CLARK. Yes.

Mr. SCHULZE. I have more questions, but other members have questions. I yield to Mr. Frenzel.

Mr. FRENZEL. Gentlemen, thank you very much for your testimony. It is going to be helpful to us as we try to wade through what seems to be a significant problem.

This morning we talked about some problems that importers were having. I suppose it can be described as seizure problems, particularly under section 1595 instead of section 1592; and weight problems where the importers didn't know quite how the service was handling its weighing, although importers would like to have cloned systems that would do the same thing so they would not have difficulty. Finally, there is the problem of intensive scrutiny, which seemed at least in the minds of the witnesses to have been a kind of form of harassment. If you make a mistake, or rather, if some person you are doing business with overseas makes a mistake, everything you get from then on gets worked over pretty well.

I did not note in any of your testimony comments on these items. They may be things that need to be commented on by others.

On the other hand, if any of you have any thoughts on them now, I would appreciate hearing from you.

Mr. ROBISON. If I could make a comment, sir, I am Inspector Robison from Seattle.

The preponderance of the testimony from this morning seemed to be in the area of textiles, gloves and children's clothing.

There we have mandated by Congress certain restrictions on merchandise for visa or quota—these are in most instances absolute quotas by weight or by piece. And these are established by Congress, whereby if the merchandise does not conform, or if the quota is filled within a particular commodity and that tariff number, those goods are restricted or prohibited from entering the United States.

Section I think 1595a(c) that you referred to, or that has been referred to earlier, allows the Custom Service to seize merchandize that is prohibited or restricted. And I think that that is the policy that Customs has established in utilizing that one rather than 1592.

I offer that in explanation, not necessarily in agreement. But the question was asked about determining weight for visa requirements. We have some sophisticated scales that are at the various examination places. I cannot give you a brand or anything, but I am assured that they are very accurate.

And we are charged with the responsibility of selecting from various boxes within a cargo shipment at least three of each style and size, which we then take back, weigh, and multiply by the number of styles and sizes that are in the shipment; and that is how we determine the weight.

Mr. FRENZEL. That is more information than we have received so far.

Mr. ROBISON. I hope I am not telling any secrets. I do not think that that is a secret; I hope it is not. But it is a random sample that we use, and I know that because I did it about a month and a half ago with a shipment out of SEATAC.

And it seemed to be very accurate. The amount that I had was verified by the visa.

Mr. FRENZEL. How about the query or rather the statement of the chap this morning who said that they had one that was off by 4.6 percent, whereupon they were almost led to the gallows and hung. Is that typical operation?

Mr. SMITH. Typical? No, I do not believe so. I think right now they have established a policy—and we have to understand, sir, that there was no real policy originally when we discovered that there were visa and quota problems.

Right now I believe that there is a program where there is either 12 or 15 percent allowance on the first time. When we weigh the merchandise, and we find that there is a discrepancy less than it is either 12 or 15 percent, then we ignore that.

We let the visa holder know that there is a discrepancy, and release the merchandise, and we make a note of that in our computer system.

The next time the importer brings in goods, and we weigh them again, we don't give them quite that benefit. I think it drops then to 8 or 10 percent. If they have exceeded that figure, then we will seize the goods. We have been charged with the responsibility of seizing the goods.

The third time that we have the same importer and the same manufacturer and we find that there is a discrepancy in the visa weight, I do not think that there is any benefit. I do not think that they have any give.

Although from a practical standpoint, I am sure that they would ignore 2, 3, or 4 percent. But I also understand that in Seattle they have established a program, and I believe it started January 1, whereby all of the past discrepancies are wiped out.

In other words, if we had an importer that had a visa seizure within the last year, that was ignored, and we went back to square one, and they were affording the full benefit, if you would.

Mr. FRENZEL. Okay. Do you have any reason not to believe if that policy was established in Seattle, that it was posted in other regions as well?

Mr. ROBISON. I don't know, and I would not want to comment.

Mr. FRENZEL. We will try to find that out.

Mr. CLARK. It could very likely be strictly Seattle or that district policy. The district directors have a lot of authority and set their set policies that at times vary from the national directives.

Mr. FRENZEL. So each region may do it a different way?

Mr. CLARK. That is correct.

Mr. ROBISON. Each district, sir, could do it a different way.

Mr. FRENZEL. Do you think that is useful?

Mr. ROBISON. No, sir.

Mr. FRENZEL. I think it must give some pause to the people who are using the system to think that there is a different standard in each district.

Mr. ROBISON. There was a lot of mention this morning about the various discrepancies from one port to another, from one district to another, and from one region to another.

And I think all of us here understand that there are those discrepancies, and we think the practice is abhorrent. I would like to think that I could be a Customs inspector in any port in this country.

Mr. FRENZEL. I would like to think that too.

Mr. ROBISON. But I do not think that is necessarily the truth.

Mr. FRENZEL. I can understand, there may be regional differences for different kinds of products or situations, but I would like to think that our basic policies would be the same, but I have never had the feeling that they have been.

Mr. Clark, in your testimony and the others' testimony, none of you seem to have a great degree of enthusiasm for the ACS system. But one of the points that you made was that the entries which are supposed to have some kind of confidentiality about them were entered by private nongovernment employees who, of course, were able to see printouts which are intended to be confidential.

Do you want to explain how that happened?

Mr. CLARK. When Customs did a reorganization a few months ago, or in the last year or two, during the process of that reorganization, they felt it would be more effective to turn that entry control process over to lower graded people, to free up Customs inspectors to do examinations.

So they took that away from us. And they did not want to hire entry transcribers, I guess. Again, that is a policy decision I cannot really answer safely, but that is just the way they did it, they just pulled that out and contracted it.

Mr. FRENZEL. So they contracted that to somebody in the neighborhood who can provide the service.

Mr. CLARK. That is correct.

Mr. FRENZEL. You are suggesting that confidentiality under those circumstances may be breached; they don't know.

Mr. CLARK. It could be breached. We don't know, but it could be.

Mr. FRENZEL. OK, thank you very much.

Mr. Smith, at the beginning of your statement you gave this explanation of the two missions of the Customs Service, quoting the current Commissioner, indicating that the first mission was enforcement and the second the commercial mission.

Is that the way the service is being run, that is, the commercial function is number two? Is that the tail of the dog?

Mr. SMITH. I would say, definitely, Mr. Frenzel. And I think these gentlemen can all attest to that. Due to the overwhelming publicity that drugs have garnered lately, clearly the service is putting an emphasis on that.

And I think a lot of these inspectors really feel that the other mission of the service is suffering as a result.

Mr. FRENZEL. So do I. It is undeniable of course that much of that stimulus comes from right here in the Congress, where we all want to be antidrug heroes.

It is also true that a good deal of your appropriation depends on the attractiveness of being against drugs.

On the other hand, too often the commerce of the United States is secondary to other things. Our exports are sometimes secondary to other geopolitical considerations. Our imports are secondary to enforcement.

It certainly is not the way I would like to see the service run. I believe we will want to talk to the Commissioner or his representatives when they come before us on that.

But are you of a common mind that that is the emphasis of the service?

Mr. Fox. Yes, I agree totally.

Mr. Frenzel. Enforcement oriented, rather than moving the goods?

Mr. Fox. As I stated before, the priority isn't one and two, in my mind; the priority is one and a thousand and one. There is just no comparison after narcotics.

As I stated earlier, Customs just wants to push goods through the system and ignores enforcement in commercial operations and regulatory functions.

Mr. Frenzel. So instead of being inspectors, you are all Sam Spades?

Mr. Robison. Congressman, can I state that I consider myself an enforcement officer. I think that the job that I am supposed to be doing out there is not necessarily moving freight.

I would like to think that I can facilitate the movement of cargo that doesn't need examination, or that can move to the destination. However, my prime function out there is to examine freight that may be illegal or may contain illicit merchandise.

The same is true at the passenger terminal. My job is to catch the crook and to release the one that is not. And I have to do it the best way I can, and that is by looking at the cargo or interviewing the passenger.

But I do not feel that my purpose out there is to facilitate the movement of cargo. I am out there to try to find the goods that are not correct.

Mr. Frenzel. OK, I appreciate that thought.

Mr. Fox, perhaps Mr. Schulze asked you this question and I did not catch your answer. Talking about employee overrides of computer decisions, you indicated that when you did find contraband or a discrepancy—you used the words discrepancies and violations—that you found them because of the employees operating on their own and not doing what the computer told them?

Mr. Fox. Yes, I was referring to a specific program on that, although that is generally true. And the program I was talking about involves trade sensitive teams, and this is involving textiles.

And anything we have we are talking about legitimate discrepancies or seizures; 95 to 98, I have two different sets of figures, but those are my figures, were based on employee overrides of the computer decision.

Mr. Frenzel. That means that you are using your own experience to decide?

Mr. Fox. In that particular program, because the people in that program are allowed the time and the facilities and the opportunity to do that, whereas the other lines, they are not.

Mr. FRENZEL. That is you are forced to pay almost all of your attention to the sensitive exam, thereby not exercising the same vigilance on goods that are described otherwise.

Mr. Fox. As nontrade sensitive, that is correct.

Mr. FRENZEL. OK. Gentlemen, we appreciate your help. I believe there are a lot of policy questions that we need to ask of others in the Service, but what you have told us has been exceedingly helpful.

Let me ask all of you, is the Service still incurring a very large amount of overtime?

Mr. Fox. We have a significant amount of overtime in New York, but the volume of work—it is based on, we have a significant shortage of manpower. I do not know which is more efficient, the use of overtime or hiring extra manpower.

Mr. FRENZEL. Well, for whatever reason, there is overtime and irregular schedules?

Mr. Fox. Well, it is both. The Sunday holiday would be regular schedule, because you can anticipate it. During the week it is really hard to anticipate.

Mr. SMITH. Mr. Frenzel, I would just like to respond. Attached to our formal statement we have a table which indicates the number of merchandise entries in comparison to the personnel in Customs. In fiscal year 1980 there were approximately 4.4 million formal entries, and approximately 9,200 Customs personnel.

In fiscal year 1988, there are 8.2 million entries, and only an increase of about 600 personnel. So the entries are just about doubling, whereas personnel has gone up about 6 percent.

Mr. FRENZEL. Mr. Fox?

Mr. Fox. Regarding the overtime, I know it is not part of these hearings, but in New York and I am sure nearly every place in the country, especially the higher cost of living areas, when I started the job overtime was a nice way to increase my salary. Now I am dependent on it to live in New York.

I am a grade 11. I would make less than $30,000 on base salary with a promotion and 12 years of service. If you compare that with any other law enforcement officer, or any local, city, State, county government around New York area, it palls.

With my overtime, with working 60-hour weeks, I make about what a Suffolk County police officer makes, and that doesn't include that the State and county pays for all the health benefits, and plus, we cannot attract people because of the pay disparity.

So the overtime expenditures, I do not know if they are high or not, they have been pretty consistent for the last 10 years at JFK, a moderate increase in overtime. But it is the only way you can get people. It is the only way I can stay on the job, and it is unfortunate.

It is unfortunate because after 12 years on the job, and with systems like ACS, I have to debate whether I have to retool and find myself another position.

Mr. FRENZEL. Is it typical in your area for senior inspectors to be working 60 hours a week?

Mr. Fox. Well, 60 hours work is maybe slightly more than others, but they are working 50 hours a week.

Mr. **Frenzel**. But the people at the top of the list are getting a chance to work that?

Mr. Fox. Working 60-hour weeks, yes.

Mr. **Frenzel**. OK, I appreciate that.

How about the way the Service moves you around? Is there some kind of rotation system that takes you from airport to waterfront?

Mr. **Clark**. That varies from facility to facility, from port to port. Customs has a general personnel policy that they do not like you to stay in one specific location for more than 1 year within the port.

At our area, we only have really one port, it is a land border port, and that is it. We rotate between the commercial facility and the passenger vehicle processing gates. And we stay currently at commercial for a year, and then we go down and rotate through shifts a month at a time.

Mr. **Frenzel**. Thank you. How about your area, Mr. Fox?

Mr. Fox. We stay just at JFK in my area. We stay just at the airport.

Mr. **Frenzel**. How about you, Mr. Rodriguez?

Mr. **Rodriguez**. In Miami we have a 6-month rotation, 6 months in cargo and seaport, cargo airport and the baggage area. We would like to have 90 days in the baggage area and 6 months staggered rotation going to the other places. It is a lot of work in Miami.

Mr. **Frenzel**. Thank you. Mr. Robison?

Mr. **Robison**. In Seattle, we have rotation. However, we are afforded the opportunity to indicate where we would like to work.

Over the last couple of years, with very few exceptions, there has not been a great deal of motion between the airport and the waterfront. We are kind of unique in Seattle in that we still have a one-port setup, where both the waterfront and the airport are one pool of inspectors.

But with the exception of one or two or three people, most people will stay in the same area that they requested that they stay, except there is a little bit of movement to maintain proficiency. We may spend 6 weeks in the air cargo facility from passenger processing, or a month at the setting, or a month down at the waterfront, in order to maintain proficiency in each one of the areas.

Mr. **Frenzel**. Thank you very much. Mr. Distinguished Acting Chairman, I yield.

Mr. **Schulze**. I thank the gentleman from Minnesota. And I thank the panel for their answers.

Gentlemen, how do you go about monitoring quota levels or voluntary restraint agreements which require technical analysis? I am concerned with the area of textiles and steel at this point, and mainly steel.

If you have a row of steel or coil, how do you tell the content of that steel?

Mr. **Robison**. We have steel imports in Seattle. We have less than we used to. We have some tools available to us in an attempt to, in some instances, cut off a piece of an angle iron or something like that in order to weigh the goods and see that they fall under the weight classifications.

We have a toolkit at the main headquarter station at the waterfront that has a micrometer and calipers in order to determine whether in fact the diameter of the pipe is correct, or if the thickness of the steel on the pipe is correct.

Beyond that we are in areas of expertise that the inspector really cannot handle. And we have commodity specialists that will demand from an importer as an example a length of pipe or a piece of pipe in order to send it to the lab for analysis.

Mr. SCHULZE. How available is the commodity specialist? When you have a shipload of steel coming in, how do you enforce that VRA? How do you really determine? How much knowledge do you have? How much training do you have that you can tell what kind of steel it is?

Or do you have assistance readily available that can help you with that?

Mr. ROBISON. If there would be some question. I think that we had an instance several years ago where Brazilian steel is an example, we were having some problems with the moly content of Brazilian steel.

And at that time we did a little intensified examination of that particular commodity from that location in Seattle, and the commodity specialists were very readily available down there. They had equipment or experts in order to cut the pipe and actually send it to either the Customs lab or an independent lab, and I do not know which ones.

But for the most part, the inspectors—and I put myself with them—have really very little knowledge. It would take very sophisticated equipment to look at a roll of steel and determine what the content is on it.

We usually accept what the invoice is unless we have some intelligence that indicates differently. And that kind of information would come from a commodity specialist, or the ACS terminal.

Mr. SCHULZE. How about weight, Mr. Robison? After awhile get a feel for a coil or a plate?

Mr. ROBISON. No, I don't. Again, that is an area that we do not have the facility or the manpower or the expertise to be able to handle that.

And in Seattle, our commodity specialist teams do what we call importer premises examination's for merchandise that would restrict itself as being unable to be examined on a pier side for example. They will indicate to a commercial importer of steel, for example, that on this lot we want to look at some of the pieces; please when you move it to your warehouse location have that available for us. And the Customs officer would indicate to the commodity specialist when the merchandise leaves, and then they would contact the importers and say, we are going to come out to your premises, and we are going to look at that freight, and we are going to weigh it, using their scales, perhaps, or using their equipment to cut off a piece of pipe or a piece of steel, and then weigh it or send it to the lab based on that information.

But the inspectors themselves, there is very little, outside of measuring the diameter of a pipe or a piece of angle, using a tape measure to measure a length or a flange size, it is impossible.

Mr. SCHULZE. All right, so how much of that is actually done? Do you take that micrometer or those calipers when there is a shipment coming in and do it? Or is that——

Mr. ROBISON. Mr. Schulze, I was at the terminal 115 in Seattle, which was one of the main steel docks, and this was about 4 or 5 years ago. I have been at the passenger terminal quite a long time. But we are no longer pier-side. We have a central office at Harbor Island, and we have inspectors at various CESs and CFSs and we do not have any inspector that is assigned to the steelyards anymore.

So I would have to say that the amount of examination on those kinds of products now is slim or none. We just do not have the people any more.

Mr. SCHULZE. Mr. Rodriguez.

Mr. RODRIGUEZ. Mr. Schulze, I worked for years in San Juan, Puerto Rico, as a Customs inspector. And I would say that probably one of the solutions to centralize, more to centralization, we have one pier, pier 13, probably is one of the biggest ports for bringing this type of material from Japan, Southeast Asia.

And we have a commodity team. We have a grade 11. And we have a specialist in that area.

The first document that we used was the specialist invoice that they had to present in the embassy. The solution here in this area is experience and training and more training.

In other words, train the Customs officer what to do in the paperwork, the equipment is there. It is not difficult, after you have this experience over 6 months or 1 year.

Just looking at the cargo alone, I could say from experience of looking at the container, how many pounds. Just looking at the tires. It was 60,000 pounds, 40,000 pounds. It is just training, is the solution in that area.

Have the commodity team work together with the inspectors, and that will resolve that situation there.

Mr. SCHULZE. Some years ago I understand that the Customs Service developed, with the assistance of the industry, a mobile metal alloy analyzer, and that it was used very successfully to monitor compliance with the VRA on steel.

Can you tell me, or do you have any knowledge, where these units are now? Are they are still being utilized?

Mr. CLARK. I've never heard of them.

Mr. ROBISON. We did have one in Seattle. I do not know how much it was used. The commodity specialist's name, I think, was Sid Bishop, and he was the one that was handling the steel. And I believe that we had one of those units in Seattle.

Where it is now, or what it is doing, I have no idea, sir.

Mr. SCHULZE. All right, so you had one in Seattle. It was being utilized. But the individual using it was transferred, so it may still be sitting there but it is not being utilized today.

Mr. ROBISON. Mr. Bishop is still in the commercial operations division. However, I do not think he is a member of a commodity specialist team right now. I think he has some other job within the Customs.

And I couldn't even tell you now where the unit is.

Mr. SCHULZE. None of you being inspectors would have been trained to use this type of equipment because you are not specialists; is that correct?

Gentlemen, I have a few more questions. I would like to ask you about the new .357 magnum which you all have to carry, as I understand it.

I am concerned that it is a lot of weapon for an inspector to carry. It is perhaps more weapon than an inspector should carry. I am also concerned because I understand there have been repeated problems with this revolver, and that some of them have been sent back for reworking, more than once. I wonder if any of you have either had experience with them, or any thoughts. I would like to have your thoughts and feelings on——

Mr. RODRIGUEZ. We have this situation in Miami, sir. Miami, most of the weapons, they have to be sent to Glencoe for modification.

Mr. SCHULZE. Now how was it determined, Mr. Rodriguez, that there were problems with it?

Mr. RODRIGUEZ. I will say, Congressman, lack of expertise in the area. When the Customs Service committed itself to buy these weapons, and a study was made about what type of weapon would be more economical for the taxpayer, I would say that they probably went by the size of the weapon. Size in weapons, and myself being a retired military man, is no how big is the weapon. Who is behind that weapon. Sometimes we have a person with a big weapon that cannot shoot, because of lack of training.

Sometimes we carry a smaller weapon and it is more efficient because of training. So I feel that we waste a lot of money and effort to try to qualify people with these big .357, especially the women. They have the small hands. They have a tremendous difficulty to be trained and qualified with this weapon.

I feel that they should use a 9 millimeter, smaller weapon. I feel that myself. I am a public servant. I am not a policeman. I came here to protect the revenue and enforce the laws of the United States. Therefore, this weapon is too big for the majority of the females that we have in the service. We should revamp the system.

Mr. SCHULZE. Since all inspectors, if I am not mistaken, are required to carry the weapon—is that correct?

Mr. CLARK. At this stage it is optional. We are all issued them. They are possibly going to propose that it is mandatory for inspectors.

Mr. SCHULZE. But you can carry either that issued weapon or your own, is that correct?

Mr. CLARK. Correct. At this stage.

Mr. SCHULZE. It is heading in that direction?

Mr. CLARK. Yes.

Mr. SCHULZE. How much training or opportunity for training do you receive? How much is mandatory, and how much additional opportunity do you have to qualify with that weapon?

Mr. CLARK. We have to qualify once a quarter. The score right now is 243, I believe, and it keeps sneaking up there. That is going to create a problem with some of the older inspectors, and possibly with some of the females because of the size of the gun.

We are also under the labor contract which NTEU negotiated with Customs. We are allotted a specific amount of time to qualify on Government time, and then to practice.

However, again, with the manpower staffing the way it is, I have not been able to get them to release me to go practice.

Mr. SCHULZE. Are ranges readily available?

Mr. CLARK. No. At San Ysidro, we beg, borrow or steal a range. We float between the police range, a border patrol range, and a range at one of the naval air stations.

Mr. SCHULZE. A typical female inspector who is given a new weapon, which happens to be a .357 magnum, what kind of training would she go through? Tell me how that process would work.

I would presume she is not just issued a weapon, and told, here, put this on your hip, and some time in the next couple of months we will get around to telling you how to use it.

Mr. CLARK. When they go to Glencoe, to the basic inspector school, they have a—I am not sure how long it is, but it is a fairly intensive, at least week-long program in firearms training, and they are not given a weapon until they complete that training satisfactorily.

In 1972, it took me 9 months before I was able to carry a weapon, because it took me that long to figure out how to shoot the dang thing and hit something with it.

Mr. FOX. However, after you have gone through Glencoe, since the issuing of this gun, you assumed—you did not want to assume but that is what is happening—is they give you the .357 and then they tell you to go qualify in New York we have to go qualify with it. There was no other training offered whatsoever.

The first time I fired a .357, the very first time, was to qualify with the .357. All right. That is the only—and to be honest, since getting it—and we just got it back, I did not have it for 9 months—the narco/terrorist threat had to be held in abeyance. But since I got the gun, the only time I have fired it has been to qualify.

There has been absolutely no training whatsoever.

Mr. SCHULZE. Are there instructors on the range? If you are borrowing somebody else's range do you just walk in there and say I am a Customs officer, and I'd like to spend some time qualifying or familiarizing myself?

Mr. CLARK. At least every district, and possibly most ports have a specific person who receives extra training in firearms, and is designated as a firearms instruction, as a collateral position.

Mr. SCHULZE. Have any of your weapons had to be sent back for repair?

Mr. CLARK. I think we all have.

Mr. ROBISON. I think that they did require all the weapons to go back to be tested, and then if modification was necessary then they did modifications.

I would like to take a little different tack. In Seattle I think that—well, from a firearms standpoint we are very well trained. We are afforded the opportunity to shoot when we wish to shoot or when the time allows us to shoot.

We have had several persons—none of them women, by the way—who have needed extra training in the firearms, and they have afforded them the opportunity to go out any time that they wished to, or that the workload allowed them to, with a firearms instructor, for one-on-one training.

So perhaps in Seattle there is more emphasis on it, but I probably shoot at least once a month with mine, through either the regular course that we shoot or just bulls-eye shooting.

Mr. SCHULZE. When you are using this new weapon, do you use it with the .357 Mag ammunition or the .38?

Mr. ROBISON. In Seattle, Mr. Chairman, we do use the .357 ammunition. However, the firearms instructors in Seattle are attempting to get permission for at least those inspectors that are inside the passenger terminal, at Sea-Tac, to be allowed to carry the .38 plus PMO just because the .357 is an awfully strong round.

Mr. SCHULZE. I agree, and I believe that makes a lot of sense.

Mr. ROBISON. Well, I think it does, too, and if I qualify with .38 ammunition, or at least practice with .38 ammunition, my scores are much higher than when I shoot with a .357.

Mr. SCHULZE. It is understandable. One final question, gentlemen, and I thank you for bearing with us for this length of time.

I would like to have your opinion of the red door/green door approach. We keep hearing that things work so smoothly in Europe because they use the red door/green door.

You are on the line. I presume you are aware of the concept and know what it does and how it works. Should we initiate a red door/green door program here? I know it is being tested.

But should we just go ahead and initiate one, and, if we do, are there certain specifications we should make along with it? Is the European system working, or just what do you hear and what are your thoughts?

Mr. FOX. At JFK Airport we have a modified red/green system. Basically, we designate inspection areas are red/green and you pass through.

However, we still have, even in the green areas, the requirement that an inspector at least spend some physical time with each passenger, whether it be 5 or 10 seconds.

We also have what is called rovers, low-risk rovers, who will go out and identify what we consider low-risk passengers, and sign them all out so they can circumvent going through the inspection areas.

This system works very well for Kennedy Airport. If we had more personnel it would work very well.

Mr. SCHULZE. Do they look for low risk, or high risk?

Mr. FOX. We look for both. I am a senior inspector, so I would be in a roving position. I will be designated a low risk or a high risk, depending on flights, depending on personnel.

As a low risk, my prime responsibility is to get as many people out of the area as quickly as possible. As a high risk, naturally I am identifying———

Mr. SCHULZE. Are you in uniform when you do that?

Mr. FOX. Yes. I am.

Mr. SCHULZE. For low risk. How about for high risk?

Mr. FOX. For high risk also. We do have plainclothes contraband enforcement team inspectors who will augment, you know, the presence for high risk. But to differ with you on the red/green, I believe if you look at what Britain is doing, they are kind of going

Mr. **Schulze**. Gentlemen, you have been very kind with your time. Mr. Frenzel, do you have any further questions?

Mr. **Frenzel**. No questions.

Mr. **Schulze**. Unless you have something you'd like to add to what has been said, we appreciate very much your taking time to come here and help us. I would like to invite you to tell us if there are any things that you can think of that you would like us to look into. This is not a witch hunt. We are not trying to nail anybody against the wall.

We want to try to make Customs a good place to work. We want you to be efficient, we want you to enjoy your jobs, and we want you to operate in a manner which reflects well on the United States of America.

I would imagine they are your goals as well. So if there are ways that you can see, that you can do your job better, we would be happy to have those recommendations.

We thank you for taking time and appearing before us today.

For our next panel we are going to combine the next two panels. We have Mr. Kenneth Kumm who is the corporate manager of customs and trade affairs at 3M Corp. He is accompanied by Mr. David Elliott of Procter & Gamble, and Mr. Outman of Baker & McKenzie, and Mr. Lehman of Barnes, Richardson & Colburn. We are going to combine that panel with the National Retail Merchants Association.

Ms. O'Dell, Mr. Langlois, and Mr. Pellegrini. If you will come forth, I think we can make enough room up there. We will try to allow you to be heard as expeditiously as possible.

Your full statements will be made a part of the record. You may address them if you wish, or you may summarize, or you may add to your statements.

We will be happy to take it in any way that you would like to present it. Mr. Kumm, if you will begin, please. Welcome.

STATEMENT OF KENNETH A. KUMM, CHAIRMAN, JOINT INDUSTRY GROUP (CORPORATE MANAGER, CUSTOMS AND TRADE AFFAIRS, 3M CORP.), ACCOMPANIED BY DAVID J. ELLIOTT, ASSOCIATE DIRECTOR, INTERNATIONAL DEPARTMENT, PROCTER & GAMBLE CO.; WILLIAM D. OUTMAN II, ESQ., BAKER & McKENZIE; AND LEONARD LEHMAN, ESQ., BARNES, RICHARDSON & COLBURN

Mr. **Kumm**. Thank you, Mr. Chairman. My name is Kenneth Kumm. I am chairman of the Joint Industry Group, and manager for customs and trade affairs for the 3M Co.

I am accompanied today by David Elliott, who is past chairman of our organization, and associate director of customs administration for Procter & Gamble Co.; Bill Outman with the law firm of Baker & McKenzie, who is also chairman of the Joint Industry Group's committee on customs fraud and penalty provision; and Leonard Lehman with the law firm of Barnes, Richardson & Colburn, and a former Assistant Commissioner of Customs.

Mr. Chairman, all of us appearing today have been active in the Joint Industry Group for many years, and we welcome the interest of the Committee on Ways and Means and its Subcommittee on

Oversight in the subject matter of this hearing, which is the operation and activities of the U.S. Customs Service.

The Joint Industry Group is a business coalition of trade associations, manufacturing firms, and other business firms and professional firms involved in international trade with a central interest in customs matters.

By the way, we represent about 26 trade associations, such as the Chemical Manufacturers' Association, Computer and Business Equipment Manufacturers' Association, Electronic Industries, Motor Vehicle Association, and the National Association of Manufacturers, among others.

Those trade associations actually supporting the statement are listed in attachment A.

The coalition is a very informal organization which follows the development in the customs areas through voluntary and cooperative work of its members.

Many of the representatives are intimately familiar with the issues and the procedures of Customs, and through its committees develop position papers on Customs.

In light of the purpose of these Oversight Committee hearings on Customs Service, it is helpful to recall the original purpose of the forming of the Joint Industry Group.

Prior to the Customs Procedural Reform Act of 1978, enforcement activities of the Customs Service were escalating the risk of importing by business firms.

Under the fraud and penalty provision, section 592 of the Tariff Act of 1930, an allegation of customs law violation essentially was tantamount to a charge of fraud, no matter what the seriousness of the violation, be it a simple clerical error or a real intent to introduce imports under false and fraudulent pretenses.

In this climate, seizes sometimes took place without warning, at gun point, involving both seizure of goods and of pertinent business records. Such actions could, and sometimes did bring business to a halt, entailing very high costs to the firms involved, many of which were guilty only of clerical errors or lack of knowledge of rulings, and with no intent to defraud.

The Joint Industry Group and other trade associations of the business community worked hard with the Committee on Ways and Means and Finance on the legislation that became known as the Customs Procedural Reform and Simplification Act of 1978.

The goal was to create a statute which would deal effectively with the violation of customs law, to establish penalties equal to the degree of culpability, to permit Customs and the business community to work towards a framework of commercial operations and enforcement climate which would adequately inform the importer of customs rules and regulations, and their proper interpretation.

We felt that the 1978 act fairly well met those goals. The Joint Industry Group has continued, since the enactment, and it has grown. It has grown because an agency dedicated to enforcing customs laws, evenhandedly and effectively, and at the same time facilitating commerce in an impartial manner, free of trade policy orientation, has become even more important to the U.S. business community.

This is indicated by the number and size of the trade association members associated with the Joint Industry Group. An effective Customs Service facilitating commerce has become all the more important because the U.S. firms have become more international in their production and marketing operations.

With modern inventory and supply-control techniques, avoiding delays at national borders has become all the more essential. Moreover, international trade has assumed a far more significant role in manufacturing and merchandising in the United States than in years past.

I might say that many of the firms that participate in the Joint Industry Group have a global orientation and are just as active in working with the Customs authorities in other countries as they are within the United States.

And strict, or arbitrary enforcement of customs laws, or the use of varying degrees of interpretation can be construed by our trading partners as an opportunity on their part to affect our exports.

I know our company, for example, does business in 50 countries, and we see a varying degree of enforcement, and the use of enforcement of customs laws as a trade barrier in some cases.

By way of a digression, I would like to mention that the role of the U.S. Customs Service has been diminished in the Customs Cooperation Council, somewhat because of finances, somewhat because of the—you might say—the U.S. orientation of activities rather than recognizing the importance of the CCC and its participation within the international community.

The vast majority of firms which import have far too much at stake than to conduct their operations in the customs area in a manner that engenders financial risk beyond normal business parameters.

We have worked with Customs over the years on many issues of trade facilitation. We applaud the emphasis given to automation, but with some reservations. Automation may assist in the entry process but that does not make up for the dwindling number of professionals, particularly the import specialists who are essential to the trade facilitation process.

In our statement for the record, we discuss many of our concerns with the overall approach and the details of the commercial operations of the Customs Service. Lack of personnel, morale, lack of published rulings, and varying degrees of interpretations.

In business, much emphasis is placed on quality and its associated costs. In the past, considerable effort has been connected with corrective action in manufacturing and the merchandising process.

Today, however, in business, emphasis is being directed toward prevention. The same should be true of Customs where efforts should be devoted more toward issuing rulings, directives, and guidance, and replace investigation, penalties and court costs.

Central direction is so important, and I think it was obvious in the prior panel that more standardization of direction of practice is necessary and that direction should come from headquarters.

This redirected effort would then set a positive tone for interface with the business community. Some of these concerns also will be addressed by associations of the Joint Industry Group who are appearing today on their own behalf.

We have cited eight cases attached to our prepared statements. The persons involved have requested that their names be withheld because they are concerned about retaliation.

However, Bill Outman, chairman of our penalties and fraud committee, has an additional example which he will comment on at the end of this testimony.

I would close by stating that as a private sector view of the U.S. Customs Service, the one element it hopes to achieve, aside from the fairness and efficiency, is predictability.

We are available now to respond to your questions, and I would like to have Bill comment on a particular case history.

[The statement of Mr. Kumm follows:]

STATEMENT KENNETH A. KUMM ON BEHALF OF THE JOINT INDUSTRY GROUP BEFORE THE SUBCOMMITTEE ON OVERSIGHT, COMMITTEE ON WAYS AND MEANS AT THE HEARING ON OVERSIGHT OF THE U.S. CUSTOMS SERVICE

My name is Kenneth A. Kumm, Chairman of the Joint Industry Group, and Manager for Customs and Trade Affairs of The 3M Company. I am accompanied today by David J. Elliott, Past Chairman of the Joint Industry Group and Associate Director, Customs Administration for Procter & Gamble; with the law firm of Baker & McKenzie, and Chairman of the Group's Committee on Customs Fraud and Penalty Provision; and Leonard Lehman with the law firm of Barnes Richardson & Colburn, and a former Assistant Commissioner of Customs.

Mr. Chairman, all of us appearing today have been active in the Joint Industry Group for many years, and we welcome the interest of the Committee on Ways and Means and its Subcommittee on Oversight on the subject matter of this hearing, the operations and activities of the U.S. Customs Service.

The Joint Industry Group is a business coalition of trade associations, manufacturing firms and other business firms and professional firms involved in international trade and with a central interest in customs matters. Those trade associations supporting this statement are listed in Attachment A. The coalition is an informal organization which follows developments in the customs area through the voluntary and cooperative work of its members. Many of the representatives of the members are intimately familiar with the issues and procedures of customs and through the committees develop positions on various customs issues and communicate them to the Executive Branch agencies and Committees and Members of Congress by means of letters and positions papers.

A recent example in the legislative area is the efforts of the Group in opposition to the so-called "customs scofflaw" and customs private right of action provisions both of which were at one time being considered in H.R. 3, the Omnibus Trade Bill. Another example of work with the Customs Service and other agencies has been the recommendations made by the Joint Industry Group on the issue of Country of Origin Rules, which evolved into the framework of the rules of origin adopted in the United States-Canada Free Trade Agreement.

In light of the purpose of these oversight hearing on the Customs Service it is helpful to recall the original purpose of forming the Joint Industry Group. Prior to the Customs Procedural Reform and Simplification Act of 1978 (the "1978 Act"), enforcement activities of the Customs Service were escalating the risk of importing by business firms. Under the fraud and penalty provision, section 592 of the Tariff Act of 1930, an allegation of customs law violation essentially was tantamount to a charge of fraud, no matter what the seriousness of the violation, be it a simple clerical error or a real intent to introduce imports under false and fraudulent pretenses. The penalty was seizure of the goods or a monetary penalty equal to the value of the customs entry, plus, possibly additional fines. While the amount of such fines could be mitigated through administrative procedures, the risk of all or nothing litigation where all the government had to prove was that a statement was false. This caused very one-sided settlements over the alleged customs violation to be made. In this climate, seizures sometimes took place without warning, at gun point, involving both seizure of goods and of pertinent business records. Such actions could and sometimes did bring business to a halt, entailing very high costs to the firms involved, many of which were culpable only of clerical errors or lack of knowledge of rulings and with no untoward intent to defraud.

The Joint Industry Group and other trade associations of the business community worked very hard with the Committees on Ways and Means and Finance on the legislation that became known as the 1978 Act. The goal was to create a statute which would deal effectively with violations of customs law, to establish penalties equal to the degree of culpability, to permit Customs and the business community to work toward a framework of commercial operations and enforcement climate which would adequately inform the importer of customs rules and regulations and their proper interpretation. It was felt that legitimate businesses should be able to engage in import operations absent unnecessary risks of an adversarial Customs Service bent on creating case records rather than informing the business community of its procedures and rulings and appropriate interpretations. We felt that the 1978 Act fairly well met those goals.

We now find in a number of operational areas that the Customs Service has strayed from the concepts of a agency dedicated to enforcing customs law even-handedly and effectively, and at the same time, facilitating commerce in an impartial manner, free of trade policy orientation.

A Customs Service dedicated to effectively but fairly enforcing the customs law and, residually, other trade statutes, was important to the United Stated business community over a decade ago when the Joint Industry Group was formed. It has become all the more important as U.S. firms have become more international in their production and marketing operations. Interruptions and delay in shipments for whatever reason have always been costly to business. With modern inventory and supply control techniques, avoiding such border delays has become all the more essential. Moreover, international trade has assumed a far more significant role in manufacturing and merchandising in the United States than in years past. Imports amount to one-tenth of our gross national product and to approximately one-fifth of our production of goods. The vast majority of firms which import have far too much at stake than to conduct their operations in the customs area in a manner that engender financial risk beyond normal business parameters. On the other hand, business can do little when faced with enforcement policies which treat every importer as an assumed violator, since such an approach ultimately destroys the effectiveness of Customs efforts to take advantage of modern data and goods processing techniques. It is these issues that members of the Joint Industry Groups wish to address in these vital hearings.

As noted in the announcement of these hearings, the resources devoted to the commercial operations of the U.S. Customs Service over the past twenty years as compared with the exponential increase in foreign trade, particularly imports of semimanufactured and manufactured products has created a dilemma. The supply of informed Import Specialists cooperatively working with brokers and importers to assure compliance with customs law and other trade laws and regulations has declined. The burgeoning demand for clearing an ever-increasing amount of goods through Customs as quickly as possibly as inventory controls and supply schedules shortened by automated data transmission have made procedural and clearance delays more costly. In many ways the Customs Service has responded to the tremendously increased volume of trade and new potentiaál for handling such volumes of trade through automation, involving modern transmission, storage, verification, and classification of data on shipments. Such programs as the Automated Commercial System and the Automated Broker Interface, initiated by Customs, are programs deserving of commendation. However, these and other ambitious programs are often undertaken with little prior consultation with the importing community. At times programs are launched with little awareness or regard for their impact on business practices of those who serve important roles in moving goods across national boundaries in full compliance with the many laws and regulations which affect introducing foreign produced goods into the commerce of the United States.

Members of the Joint Industry Group are very much aware of the need and are in support of adequate enforcement measures. The attractiveness of the vast United States market for foreign exporters and the financial rewards of selling imports undoubtedly do tempt some traders to cut corners, to falsify values, product identity, origin, ad volumes. On the other hand, U.S. businesses, if they do not have a constitutional right, have at least an understandable profit motivation, and a right confirmed by the Supreme Court, to maximize market access and minimize duties and taxes levied when such efforts are fully consistent with such laws and regulations. Such consistency often depends upon what is determined to be the appropriate interpretation of customs laws and regulations. In pursuing such access, the U.S. business community, manufacturers, distributors, merchandisers, broker, and others do have a right to expect reasonable due process in the deciding of the appropriate interpretation of the applicable laws and regulations. Such reasonable due process involves a number of factors:

1) gearing the penalties to the degree of culpability and the seriousness of the violation of customs law and regulation;

2) an opportunity to litigate points of law and regulation in an atmosphere that does not permit the Customs Service to threaten full retribution if disagreements force alleged violators to seek protection of the courts.

3) a restoration of the function of the Office of Regulations and Rulings in the Customs Service, as intended by the Congress, as a quasi-judicial body within the Custom Service which examines decisions, rulings and actions by the constituent offices of the Customs Service from the viewpoint of what the correct interpretation of the law is, rather than how best to support the positions taken by offices within the Customs Service.

4) on the part of the importing community it will be necessary to respond positively to requirements for the recordkeeping essential to satisfying the need of Customs to verify the nature and details of entries and the physical identities of goods in storage, transport and/or released. Such cooperation is necessary if Customs is to be able to adapt to modern techniques of verification of information linked to the physical goods being cleared through Customs custody.

There is a need for the Customs Service to place performance behind the statutory concept of voluntary compliance and not to foreclose the opportunity for importers to step forward and admit negligence in reporting or error in classification or value in order to avoid costly litigation for both the government and business.

In the same spirit, business must be willing to work with the Service toward post entry audit procedures that permit verification of entries. Otherwise all of the modern automated data interface will mean nothing to effective enforcement procedures.

On its part, Customs must move away from its "race to the courthouse" by attempting to correct lapses in compliance first before moving to the courts to seek penalties on unintended errors and omissions in following Customs rules and regulation.

A part of the present atmosphere which has been created is that there is widespread fraud on the part of the importing community. Allegedly quoting Customs officials, a recent colloquy of the Senate floor noted that 10 percent of U.S. imports are entering under fraudulent circumstances. There is no analysis or study to back up such conclusions. Stories of the misdeeds of a few are used as a description of practice for the many law-abiding importers. Such attitudes prevent enforcement measures from being directed at the real offenders of customs law. It certainly discourages an attitude of voluntary disclosure of unintended violations on the part of the importing community.

Customs and the Congress, should reaffirm the statutory definition of fraud, as contemplated in the 1978 Act. The burden of proof that there has been willful intent to defraud the government should rest with the government and not the importer. Any lesser standard is a failure to observe the principle of due process that would be unique in its denial of constitutional rights.

Regarding due process, the Joint Industry Group believes that what happens to the Office of Regulations and Rulings is of concern to the international trade community. The Office was intended by Congress to serve a quasi-judicial role in penalty matters, to afford an unbiased review of penalties imposed by field officers and to assure a disposition of penalties in accordance with the law as amended by the 1978 Act. The international trade community is concerned that the atmosphere of enforcement pervading the Customs Service, as evidenced by a number of statements, will impinge upon the independence of the Office of Regulations and Rulings in fulfilling its proper quasi-judicial role. Any change in policy requiring an aggressive support by legal reviewers of a parochial "Customs position" is contrary to fairness and equity, works against good relations with the entire business community, substantially increases litigation, and results in increased costs for Customs administration.

There is a proper need for the public to be able to obtain an impartially review on legal problems by the staff of qualified attorneys in the Office of Regulations and Rulings in Customs Headquarters. Regional Counsel are partisan attorneys for the Regional Commissioners, as the Chief Counsel in Washington is adviser to the Commissioner of Customs. The function of these Counsels on behalf of the Customs Service differs materially from the function of the Office of Regulations and Rulings to rule impartial on legal questions presented with respect to importer products. In short, a independently strong and impartial Office of Regulations and Rulings is essential to both voluntary compliance and effective enforcement.

Finally, the one issue that for many members of the Joint Industry Group typified the destructive enforcement attitude of some in Customs is the history and experience of new section 595a(c). This provision which was enacted as a part of the International Drug Enforcement Act of 1986 began as a request by the Customs Service for mandatory seizure authority to be employed whenever an alleged violation of Customs law took place. Its need in drug enforcement, at least in the language first proposed by Customs, was not demonstrated. The language was changed by the Committee of Ways and Means to make clear that section 592, the existing fraud and penalty provision, would continue to be applied in enforcement of strictly commercial operations. The language was again changed in the Senate, to further assure there would be no widespread use of this new seizure authority in commercial operations. Nevertheless, Customs encouraged its field offices to use this new authority in alleged violations of marking, quota limitations and other "restricted merchandise" areas, areas of commerce which have been subject to successful section 592 actions for years.

The Joint Industry Group urged that among the recommendations that this Subcommittee passes along to the Trade Subcommittee and the full Committee on Ways and Means is the statutory clarification of section 595a(c) to deal only with the original statutory intent, for the interdiction and seizure of controlled substances, drugs, and require that Customs cease using section 595a(c) for enforcement in the area of commercial operations.

It is self-evident that to comply with the law, you must first be able to determine what the law is and how it is interpreted. This has been a longstanding problem which saw some improvement immediately after the passage of the 1978 Act, but which has again become a serious matter.

The 1978 Act encouraged publication of administrative decisions, that is, customs rulings. Publication not only allows the public to know how the law is being administered, but also creates, at least for rulings on the rate of duty, what is known as "an established and uniform practice". In other words, publication sets a standard that usually can only by changed after an opportunity for the public to comment in response to a Federal Register notice and determination that the original decision was clearly wrong.

As an example of Customs' actions that were right and consistent with the intent of Congress, following adoption of the GATT Customs Valuation Code by the United States, Customs published a useful compendium of its first 63 rulings under the new valuation law. Undoubtedly, this compendium is one of the reasons why administration of an entirely different law has presented few problems. On the other hand, one of the original rulings was reversed by Customs, but the Court has since determined the original interpretation to be correct. Now Customs wants to limit the application of this judicial decision to the facts of this one specific case. Obviously, proper interpretation of the area involved is now quite murky.

Today, very few rulings are published. While eventually available on microfiche, with some becoming available through the computerized legal research tool known as Lexis, these steps, while useful, are not the same thing as publication.

On the other hand, it appears that reversals of previous positions appear to have become legion. This situation creates serious difficulties. Even if you know how the law is currently being interpreted today, it apparently can be changed tomorrow. This creates problems for compliance. It also makes investment, production, sales or contracting, decisions that must be right for an extended period (years, not weeks or months), extremely difficult.

Among the two most serious problem areas have been rules of origin and country of origin marking, which are related since the appropriate marking depends upon identifying the country of origin of the goods. From 1940 until about 1982, the Courts reached a series of consistent decisions for all areas of customs law considered -- from drawback to marking -- determining that a change in origin occurs when a product is "substantially transformed into a new or different article with a distinct name, character or use". Over the same period, Customs' administrative decisions had provided for a slight "Kentucky windage" between its interpretation for the different laws it administers. While undesirable in principle, it was livable in practice for both Customs and the business community.

Unfortunately, an aberrant case in 1982, Uniroyal, supplanted the standard of the previous forty years (which indeed had its roots in a 1887 Supreme Court case involving drawback). This decision added a new requirement in a marking case that the "substantial transformation" now had to be achieved by a "substantial manufacturing or processing operation". Shortly thereafter, Customs, under intense political pressure to change its origin standards for textile quota purposes, decided to adopt this case for country of origin decisions under the textile import program.

It also relied on a precedentially weak case decided in a District Court, rather than the Court of International Trade (which has exclusive jurisdiction in most Customs cases). Customs the decided to adopt this new standard for all decisions under all laws. This new approach, however, created a firestorm in other directions because it resulted in many products widely accepted as being American-made now being considered to be of foreign origin. In one very well publicized case (where Customs decided to reverse its position without publication for comment) key drawback precedents were ignored. Rather than its previous pronouncement of one rule for all laws, it decided to reject a key appellate judicial decision -- because it claimed the courts had decided drawback law did not require a substantial transformation" -- despite the creation of the phrase in drawback law and the court's statement that one had occurred in that specific case!

Unfortunately, the courts have not helped the situation by recently issuing a series of inconsistent decisions. There is, however, possible light at the end of this tunnel. The rules of origin for the United States - Canada Free Trade Agreement are derived from a system long used with minimum problems in Europe. The specific FTA rules are far too restrictive to apply on a broad basis, but do represent a concept that is expected to create a more consistent, predictable, durable and administrable system. We compliment those within the Administration who developed the FTA system however, until a new, universal system is developed, you will hear more -- more about "egregious violations" on the one hand, and about "outrageous and abusive administration" on the other, and both sides will be right.

In the related marking area, Customs decided to abandon its longstanding policy of enforcing marking laws at the border, while allowing internal regulatory agencies to enforce in the interior. Since then, we have been advised that Customs has become overburdened, both by requests for decisions on whether the domestic processing performed is or is not adequate under the laws as rewritten by Customs to require foreign origin markings and by requests for internal enforcement. The Joint Industry Group does not question the need for better enforcement of marking laws within the United States. However, it does question both the new rules of origin being used and whether Customs, a border enforcement agency used to operating under certain exemptions from the Bill of Rights, granted by the Supreme Court, is the proper part of the government to be doing this internal job.

This overload of ruling requests leads to our next concern. Business has complained repetitively about the time it takes to obtain binding rulings. Customs routinely produces statistics indicating that the average time to issue rulings is quite short -- 90 days -- to quote a recent example. Perhaps these figures are correct (although they are about one year short of the experiences of our members who are fairly representative of the importing community), but they are irrelevant. The point is, that whatever the average turnaround time, it is far, far too long for effective business decision-making. The world in which business operates -- and in which U.S. business must be able to world if it is to make the sound decisions required to be globally competitive -- requires faster decisions.

Mr. Chairman, we have all heard broad-scale but statistically unsubstantiated allegations of widespread Customs frauds. We respectfully suggest that Customs own burdens would be eased, as well as those of honest American business people who do not change their stripes or lose their integrity merely by doing business across national boundaries -- if Customs would do more to encourage positive voluntary compliance. Doing this right would not only make life more pleasant and business less risky and more profitable, but would increase tax revenues and free up Customs resources to concentrate on real crime.

Thank you for your interest and for providing the forum for the discussion of these issues. We will be pleased to respond to your questions.

Attachment A

LIST OF TRADE ASSOCIATIONS OF THE JOINT INDUSTRY GROUP WHICH SUPPORT STATEMENT OF CUSTOMS OVERSIGHT, JUNE 9, 1988

AEROSPACE INDUSTRIES ASSOCIATIONS
AIR TRANSPORT ASSOCIATION OF AMERICA
AMERICAN ELECTRONIC ASSOCIATION
AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS
AMERICAN RETAIL FEDERATION
AUTOMOBILE IMPORTERS OF AMERICA
CHEMICAL MANUFACTURERS ASSOCIATION
COMPUTER AND BUSINESS EQUIPMENT MANUFACTURERS ASSOCIATION
ELECTRONIC INDUSTRIES ASSOCIATION
FOREIGN TRADE ASSOCIATION OF SOUTHERN CALIFORNIA
INDA (ASSOCIATION OF THE NONWOVEN FABRICS INDUSTRY)
INTERNATIONAL FOOTWEAR ASSOCIATION
INTERNATIONAL HARDWOOD PRODUCTION ASSOCIATION
MIDWEST IMPORTERS TRADE ASSOCIATION
MINNESOTA WORLD TRADE ASSOCIATION
MOTOR VEHICLE MANUFACTURERS ASSOCIATION
NATIONAL ASSOCIATION OF FOREIGN TRADE ZONES
NATIONAL ASSOCIATION OF MANUFACTURERS
NATIONAL ASSOCIATION OF PHOTOGRAPHIC MANUFACTURERS
NATIONAL BONDED WAREHOUSE ASSOCIATION
NATIONAL CUSTOMS BROKERS AND FORWARDERS ASSOCIATION OF AMERICA
NATIONAL RETAIL MERCHANTS ASSOCIATION
NORTHWEST APPAREL AND TEXTILE ASSOCIATION
UNITED SHIPOWNERS OF AMERICA

Attachment B

INDICATIVE EXAMPLES OF EXCESSIVE CUSTOMS ENFORCEMENT*

1. Operation Heavy Metal and Other Overweight Charges

The Customs Service over-zealously enforces compliance with declared weight of imports, even when the number and/or size or import shipments, rather than weight, are used to determine the value of the shipment.

For example, in the case of steel beams, their size determines their value, and their weight is traditionally judged as "theoretical". Yet one such importer had to pay Customs tens of thousands of dollars in overtime pay for its inspectors who spent the better part of two days weighing each beam in a shipment, only to find no overweight from that declared.

An import of wire nails was charged 20% of the value of a shipment when it was found to overweigh its declared amount by 2.9%.

2. Cases of Misclassification

An importer of a new type of men's shirts went to great lengths to obtain from Customs specialist a new customs classification for its first shipment of such garments. Its second shipment was seized at another port as misclassified and charged with a $1-million penalty. Customs finally settled for zero on the dollar, but left the charges pending against the importer.

3. Automated Overvaluation

The Customs Service makes much of its new system of automated data processing. One importer was charged with a penalty duty in the amount of three times the value of its import shipment, later told that a specific examination of the merchandise should have been required. Meanwhile the goods remain seized while the importer's complaint is pending.

4. Duty-Free Samples

One importer requested -- and was denied -- permission to mutilate (as required) 11 hand-carried samples at point of entry under Customs supervision. Delay held up 177 other mutilated samples, thus constituting harassment in the company's opinion. The company's written protest to Customs Service was summarily dismissed and reflected.

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* The reason the below instances are cited are done so anonymously is because in each of these, and numerous other reported instances of Customs Service unfair and inequitable if not illegal enforcement, the subject companies or their attorneys advised that they had been warned that if they spoke out publicly against these injustices, they would be retaliated against and "punished" by Customs with respect to their future import shipments.

5. Substantial Transformation

A Central American metals fabricator "substantially transformed" Asian steel products to Customs' eventual satisfaction to justify its rules of origin -- but the ruling was delayed so long that the company meanwhile went bankrupt.

6. Claim for Liquidated Damages

Customs erroneously claimed an importer's shipment of 12-gauge sweaters were 16-gauge "coats". Even after Customs admitted its mistake when the importer proved its case, the company was charged a 2% penalty duty of $880 on $44,000 worth of goods.

7. Repeat Offenses

One importer, told that an import shipment was 2-3% overweight, was also told not to worry about it, just get a revised import visa, on grounds the overweight was "de minimus." A subsequent shipment, much later, was found to be 4% overweight, and the company was charged as a "multiple offender" even though no action had been brought in the first case. Some importers routinely and deliberately declare heavier weights and pay the extra duties just a "protection."

8. Investigative Burden and Delays in Results

This manufacturer established a program for importing material under bond, manufacturing it into a new product and then exported it with the bond thereafter being cancelled. The manufacturer set up special procedures to insure compliance, including writing a specific computer program. Before getting started, this Company visited Customs to insure everything was in line. For several years everything went well, and when the Company sold this business it had provided its Customs broker with the paperwork needed to cancel the outstanding bonds.

Unfortunately, two things went wrong. One was that the broker encountered severe and unusual personnel problems and as a result failed to file the documents on time. The other was that Customs at the port of export arbitrarily decided not to sign re-export certificates on goods imported through other ports.

In response to Customs' penalty notices, the importer spent about $60,000 in its reconstruction of its export records, including going into its own archived records and organizing searches of brokers', steamship and foreign customers' files for all available documents. Upon submission of its petition, a fifteen inch thick pile of papers that affectively proved the proper handling of the material, Customs commented that the broker was clearly at fault, that they would see if the liability could be transferred and recognized the company's efforts to do things right.

Almost a year later, Customs started to issue its decisions one-by-one - some providing the least possible mitigation provided by Customs' guidelines, rather than the maximum - which would have been called for by those guidelines. Some denied any mitigation despite copies of foreign customs entries, ocean bills of lading and other records proving export. A couple of the notices even failed to recognize receipt of the petition.

At the second meeting, Customs agreed to reconsider and indicated that the Company would be satisfied with the outcome. The results of this reconsideration are awaited with interest.

Mr. OUTMAN. Thank you, Ken. Very briefly, section 595 of the act which we have been talking about authorizes the Customs Service "to seize merchandise imported contrary to law—other than in violation of section 592."

The case we are working on now started back in May of 1987. There was an attempted entry of 17,365 pair of men's pants. Apparently the visa was about 9 pair short. An individual we are still trying to locate named Victor was driving the truck, altered the document, presented it a half hour later, and Customs seized the merchandise alleging fraud, which I think probably is the case.

Victor was not employed by the importer. The importer has not seen Victor since. No one knows who Victor is. We are not even sure about his last name.

In May, the Customs Service asked our client to post a letter of credit for $85,000. In July of 1987, the Customs Service issued a prepenalty notice under section 592, and said that fraud was contemplated.

The Customs Service was asked in August to withdraw the notice of penalty since there had been no report of investigation. In a somewhat informative letter, it says:

> Ladies and gentlemen: We have received your letter dated August 13 in which you request that the pre-penalty notice issued in the case be canceled pending receipt by the office of a report of investigation. Please be advised that we are withdrawing the pre-penalty notice. The matter will be held in abeyance pending completion of the investigation in this case.

In April of this year we have received a second communique, and it is now a seizure under authority of 595(a)(c). The goods have been released upon the payment or posting of this $87,000 letter of credit.

We have nine garments in dispute, we have no involvement by the company, and now we have a seizure being noticed under 595(a), even though it started out under 592.

So we think this is somewhat indicative of what is happening in the field and shows how we believe that 595(a)(c) really needs to be revisited. Thank you.

Mr. SCHULZE. Thank you, gentlemen. Mr. Frenzel, do you have questions which you would like to ask?

Mr. FRENZEL. Yes, I do, Mr. Chairman. I want to thank the panel for its good counsel and note that we see some familiar faces there; a former officer of the Commerce Department, and an old friend who helped us in 1978, Dave Elliott.

I would note that they have other luminaries who have been active in this business for a long time and been very helpful to us.

My first question is of Bill Outman. You have these problems of which you have documented eight cases and reviewed another one for us. They involve the distinction between sections 592 and 595, the seizure statutes, and what you might describe at least as harassment of nonuniformity of policies and directives. How do those originate? Is it that the overall Customs' policy is not clear or well articulated?

Is it that the districts have too much autonomy? Is it that the personnel are inadequate, or are they badly trained? The complaints now are becoming overwhelming. Everybody's got a complaint at some point, but people are now standing in line to register complaints.

Mr. OUTMAN. I think what we are seeing, Mr. Frenzel, is a little bit of what we saw back in the mid-1970s. As we heard from the panel that preceded us, we have five gentlemen whose mission—if they had to rate it in terms of what it is versus what perhaps it is supposed to be on paper—enforcement is the term of reference, and as you move into the commercial sector, the same people who are doing enforcement are trying to also handle commercial activities.

And I do not know whether it was just my bad luck to have clients who seemed to get in the way of people on the wrong day, but we are seeing a lot of enforcement coming into this commercial sector, and people are looking at—for example—these 9 garments out of 17,365. That is .005. That still is de minimis in my book, but they are seizing the entire shipment.

They are not saying you have nine bad apples or you have got nine problems, or Victor is a bad truck driver. They are saying get the company, get the entire merchandise, and it is a question of who's looking down whose .357 magnum.

My client has $150,000 at risk and all over nine garments. So I think it is that enforcement mentality seeping into the commercial sector.

Mr. FRENZEL. Thank you very much. Of course we have been told that the number of entris has doubled in the last 4 or 5 years, and are going to double again after that. We will probably be looking at a force something like that which we have now for the next couple of doublings. Mr. Lehman.

Mr. LEHMAN. Yes. If I could take a shot at giving perhaps some historical perspective on this.

Mr. FRENZEL. Well, do so. You are in a good position, having been a former staffer in the Customs Service.

Mr. LEHMAN. Well, when I first joined the Customs Service it was in the late 1960s after a major reorganization that knocked out the old political collector system, and it was the birth of containerization, it was the birth of the 747, and trade was on the verge of explosion.

And the basic approach of the Customs Service in those years in the late 1960s into the 1970s, with legislation in 1970 that hit one part of a problem and that culminated in more legislation that you are familiar with, in 1978. The objective behind those legislative packages, and behind the internal reorganizations, as I recall it, was to solve problems at the earliest possible stage, to get to grassroots problem-solving.

The old 90-day period for processing protests was extended to 2 years to encourage administrative solution to problems. A rulings program was put into place. The number of lawyers in the group that I headed in OR&R was doubled, and the objective was to give to the commercial sector predictability, uniformity, and consistency of treatment, so that the commercial sector could plan its transactions and seek compliance to everybody's benefit.

And the law changes in 1978 were a normal culmination of this, particularly in the 592 amendments, which changed the old physical seizure approach to customs law to a compliance approach that imposed in persona monetary penalties that were commensurate to the degree of culpability at the first stage.

It seems that if you look back at 1978, which now seems like millions of years ago, what you had was a good-faith effort to combine the two Customs' missions of enforcement and commercial processing, so that each got equal attention and so that people paid what they were expected to pay, punishments fit the crime, but you did not have this kind of an inter orem kind of processing that lost track of the burdens that are imposed when laws are imposed in an insensitive way that do not recognize the need for judgmental exercise.

And the pendulum seems to be swinging back. The 595(a) amendment that was intended to deal with narcotics, and being expanded to the commercial sector is simply undermining all the changes that were made in section 592 in the year 1978, and I think what is needed is a stepping back, a regaining of perspective on what the Customs' dual missions should be, so that each gets full attention, and each deserves full attention.

But one should not be sacrificed to the other and that is what is happening.

Mr. FRENZEL. So your historical perspective tells you that the conditions have gotten the best of us and it is time to restructure as we did in 1978, so that both functions can be served adequately?

Mr. LEHMAN. I think that the public interest will not be well-served unless both functions are served adequately.

Mr. FRENZEL. You heard, incidentally, one of our senior inspectors who indicated that it was his opinion that the quota law enforcement that is exercised by the Customs Service imposes upon them the obligation to use section 595 to seize textiles. Was that your impression of a legitimate use of section 595 when it was passed?

Mr. LEHMAN. I do not think that was the intention of Congress when it made the changes in 595 in 1986. I think the intention was to expand the seizure authority in the area of fully prohibited merchandise.

There are more than enough adequate tools existing in law today to deal with commercial violations. Those tools have always been there, and the commercial violations include quotas.

And in fact there is a provision in 592(a) that authorizes seizure under 592 itself, in cases where prohibited merchandise violations are involved. That provision has never been used, historically, under 592.

In the quota areas, as an example of the absence of judgment, I think the example has been given by many speakers this morning and this afternoon: If you have a visa that authorizes 1,000 units, and 1,010 units come in, the area of dispute consists of those 10 units. There is no dispute about the other thousand.

There is every reason to hold, to seize, to retain, whatever you want to call it, the 10 units that are in dispute, but to hold up the entire shipment is simply to impose a nontariff barrier to the flow of trade and I do not think that is what Congress intended.

Mr. FRENZEL. That sort of takes us back to the old "gee whiz" numbers of 1977.

Mr. LEHMAN. Very much so.

Mr. **Frenzel**. Mr. Outman, how about the harassment of the members of your group? It seems like there's just too many of them.

Mr. **Outman**. I had not thought of this in terms of harassment. It is this discharge of a perceived mission in a very overly enthusiastic manner, as I would agree totally with Len—on this particular shipment it is very regrettable that this Mexican national figured he was smart enough to change a 3 to an 8, show back up one-half hour later and fool a Customs inspector that he had been to Mexico City to get a new visa and come back, and that really qualifies as a no-brainer.

But my client is not privy to any of this. It is my client's 17,000 garments, just like we heard this morning, trying to get to a market, and if you want to talk about whose got the leverage—if you will hold my 17,000 garments, you are going to be in a whole lot better bargaining position, and Customs I think is using that to its advantage and to the importing, commercial sector's disadvantage.

Mr. **Frenzel**. Well, I assume you were here when the Seattle-Takoma Customs inspector indicated the leeway they give with respect to weight, or whatever the volume measurement is. Does your experience indicate that your association, or your coalition members are getting that kind of treatment?

Mr. **Outman**. It has not proved to be a very meaningful allowance. I have not seen it in practice, but as I think one of the gentlemen this morning was talking about his experiences in Haiti, they set the system in motion on a Monday and he gets garments in Tuesday, he gets garments in Wednesday, he gets garments in Thursday.

Well, the people back in Haiti did not have a chance to turn the dial or to change the windage, so he is going to hit his three violations in one week's time, and they will treat him nicely the first two shipments, and I guess seize him the third day through.

So it is not that meaningful——

Mr. **Frenzel**. I was thinking of the weight problem where the inspector said, well, we will give you 18 percent variation the first time, something else the second time, and thereafter no variation.

Mr. **Outman**. What I'm suggesting, Mr. Frenzel, is that Tuesday's shipment maybe you get through, Wednesday's shipment you get through, and on Thursday you are seized because it is about the first time you hear about the problem.

It is quite similar to scofflaw. You know, we could be scofflaws by Wednesday of any given week. So, that was one of the problems.

Mr. **Frenzel**. The problem does come in the conflict between the two missions. The Service does not feel it has the resources to handle them all. I wonder, Mr. Kumm, and Mr. Elliott, you are representatives of very large companies, you are important officials of those companies. It is significant that you two have been assigned to this kind of duty.

Obviously the Customs Service and its effect on your business is very important and very expensive. Can you give us an idea of what happens, or the scope of the difficulty when you encounter persistent Customs delays?

Mr. **Elliott**. Let me take a quick crack at some of that. Procter & Gamble is a $17 billion corporation. We have 55 plants scattered throughout the United States, in Pennsylvania, Puerto Rico, to the west coast.

All kinds of different categories of business, 37 of them. We are typical of the great majority of American manufacturing companies today. We cannot exist without imports somewhere relative to almost all our product line. Some raw materials, some necessary packaging, equipment, something like that.

Almost every one of our many, many brands has some import relationship to it, even if it is just an ingredient in a flavoring material.

Great diversity of needs and problems. Many interactions with Customs. A fairly recent example. We found a need to import a topping packet for our Duncan Hines Muffin Mixes from our plant in Pointe Claire, Canada, because of a supply unavailability in the United States.

Someone that works for me carefully looked at the sugar quota provision, concluded these topping packets were not subject to sugar quotas, called the import specialist at the port concerned, and he agreed with him. Because there was no way to go get a ruling within the time frames.

He was told by the port, agreement not subject to quotas. We imported about $400,000 worth of these packets containing maybe $30,000 worth of sugar, had produced a finished product with them, packed it out, sold a small amount, when we got a redelivery notice from Customs, because in New York they decided they were subject to sugar quotas.

An immediate shutdown of the operation in Canada, emergency resupply from the United States, diverted our product research people from research to demonstrate—coming up with a protocol—to demonstrate to Customs that nothing happened to these toppings during the baking process. Had a meeting at our plant on Staten Island with Customs, and then, finally, it was agreed that, yes, we were right, these things were not subject to quotas and they should not have been recalled.

However, in terms of the disruption of our operations, the diversion of a considerable amount of management and research talent, and the loss of about $200,000. It is now behind us, and we have run into these kinds of problems fairly periodically.

You mentioned, sir, the difficulty of Customs in an enforcement role while not obstructing the importation process, which has essentially become critical to American manufacturing businesses.

The joint group perceives its role as not to be bomb-throwers or obstructionists. We try to work with Customs as closely as we can in a positive way, and probably as closely as a taxpayer should work with a tax collector. We believe in and support fair and effective law enforcement.

On the other hand, we do not believe that the pressures which apparently inevitably and repetitively occur within this law-enforcement agency—to take high-impact "Miami Vice" type of approaches—achieves either effectiveness or fairness.

In fact we think that this kind of approach is inevitably doomed to final failure. There's simply no substitute for what we call positive voluntary compliance; clear, consistent and predictable legal interpretation; ready and timely availability of those interpretations; and steady, effective reminders to the importing community of their responsibilities, through an adequate, trained, professional, and motivated import specialist and audit staff.

This approach not only minimizes the frequency of errors and violations, but allows more intensive effort in the enforcement area against real smugglers, contraband runners, and drug importers.

Mr. SCHULZE. Thank you. Mr. Kumm.

Mr. KUMM. I would like to echo Dave's remarks. It is an ongoing question within our corporation. We manufacture probably about 50,000 different items. We have maybe 2,500 different product lines, and our marketing people are constantly determining where to manufacture goods, and also, what sources of supply—our manufacturing people are trying to determine sources of supply of goods, and also, how we can assist, and export our products to assist manufacturers overseas to utilize our product.

And we are constantly seeking decisions from the Customs Service. In many cases, as you can well imagine, if a marketing person is intent upon producing profit for the shareholders, he wants his answers right now rather than to wait for a year or so.

And we have had many instances where we have requested rulings on possible product development, and these rulings take far longer than the 90 days that is said to be the average.

When you run a business you cannot operate like this, and when you run an international business and cross borders, it even becomes more complicated.

I will give you just a simple example of the types of questions that we are faced with daily. Here is a set of gloves that were imported from Korea by a distributor in the United States.

We sold the Thinsulate which is an insulating product, and it was shipped to Korea, and the gloves came back, of course, manufactured there with our Thinsulate. On the inside the product is marked "Made in Korea". There is a little black tag hanging on it that says this is a product—where it is?—this is a product of Korea. And if you have ever looked at suits, or anything in the stores, you know there are a lot of tags hanging on them.

This tag says "Made in Korea". Inside the cuff it says "Made in Korea". But the import—or the inspector—unfortunately it was not Seattle or San Diego—it was in San Francisco—decided because there was a tag hanging on here that described the insulating properties of the Thinsulate that's in the glove, and down below on the tag it says "Thinsulate is a registered trademark of Minnesota Mining & Manufacturing Co., St. Paul, Minnesota"—that we were trying to disguise the fact that this was Korean manufacture.

This constantly takes place. There is a mission not only to—in the marking area—and I talked with executives in the Customs Service about that, and I said if we enter this in one location there's no problem. If we enter it at a particular time it is not a problem, but if we get an overly officious inspector at a particular point in time, either having a bad day, or having been reprimanded for whatever reason, they will make a decision to hold up a shipment and cause, obviously, economic impact on the distributor.

The answer I got from headquarters was, well, that's up to the person that's inspecting the merchandise, in that district or that port, at the time that it arrives.

So, what we are looking for is the fact that there has to be more direction, centralized direction out of the Office of Regulations and Rulings, to assist and to eliminate all of the problems that happen after the import.

This is just a minor example, but it goes on all the time. It is interruptive to international trade, and it gives neat ideas, possibly, to our trading partners, that maybe they could do the same thing on exports from the United States.

So I think we have to have centralized direction, we have to staff up the Office of Regulations and Rulings with competent personnel, and to the point that they will assist exporters, importers, in international business.

Mr. **FRENZEL**. What are you looking for? Some kind of certainty and stability that you can——

Mr. **KUMM**. Stability. Certainty.

Mr. **FRENZEL**. You want it to be the same in every port, if possible?

Mr. **KUMM**. Exactly. Exactly.

Mr. **FRENZEL**. Thank you very much.

Mr. **SCHULZE**. Thank you, gentlemen. I have no questions of the Joint Industry Group, and if you have time constraints, and would like to, you are free to go. Or you are free to stay, if you would like.

Now we will go ahead with testimony from the rest of the panel.

Mr. **KUMM**. Thank you very much. I have to catch a plane back to the great area of the Twin Cities.

Mr. **SCHULZE**. Minneapolis? Yes.

Mr. **FRENZEL**. Well, he goes to the wrong side of the river but he is a nice fellow anyway.

Mr. **SCHULZE**. Now we have Jane O'Dell from the National Retail Merchants Association.

STATEMENT OF JANE B. O'DELL, CONSULTANT, NATIONAL RETAIL MERCHANTS ASSOCIATION, ACCOMPANIED BY CHARLES BAYAR, COUNSEL

Ms. **O'DELL**. My name is Jane O'Dell. I'm a senior manager with Peat Marwick Main in the trade advisory service, and I'm speaking today on behalf of the National Retail Merchants Association.

With me is Charles Bayar of Weil, Gotshal, Manges. He is customs counsel to the NRMA.

The reason that the association asked me to speak for them today is because in my work experience I have been an import specialist for the U.S. Customs Service. I have been a customs broker and am a licensed customs broker, and I have managed imports for a firm involved in sourcing both from the Far East and domestically. Because of this, I have a rather wide perspective on Customs operations.

First, I would like to say that we agree with the things that we have heard the other import witnesses say today, and rather than echoing everything that they have said, we want to concentrate our testimony on one particular area, that of classification of merchandise.

Classification, as you will have gathered by now, is important to importers for two reasons. The first is, classification establishes the duty that the importer will have to pay, and that has a significant impact on his cost.

For retailers, classification has a profound impact on the resale price that they can charge in stores. The second thing that is controlled by classification is the admissability of merchandise. That is, is merchandise subject to quotas or visas, or are there any other agencies that have controls that they need to place on the merchandise such as the Food and Drug administration, FTC, or Fish and Wildlife Service.

Clearly, both in cost planning and in making a determination as to whether or not they will be able to have the merchandise available in the stores for sale, classification is of tremendous importance to all of our members.

You heard Mr. Lehman say a minute ago, that the Joint Industry Group is seeking, or that they would like to see predictability, uniformity, and consistency. NRMA would also like to see reasonability used in the classification process.

We have brought some examples of experiences that various members of the NRMA have had, in seeking to obtain classification information from the Customs Service.

The first example is clearly a piece of luggage, and there is no question in our minds, or in the minds of any of our members, or in the minds of the Customs Service about that; however, that particular piece of luggage actually represents a new item of commerce.

It looks like it is made out of textiles. However, the surface material is made of paper. The retailer who planned to import this item was knowledgeable enough to know that there was not a prior history for this type of merchandise, and they thought it would be prudent of them to obtain a binding ruling from the Customs Service, so that they would know well in advance of shipping the merchandise, what documentation they needed, and whether it was subject to any special restrictions.

In July of 1987, they requested a binding ruling from Customs. In December of 1987 they received the first shipment. They had never received a ruling nor had they, after repeated phone calls, even been able to get an indication of what direction Customs was leaning on this particular product.

If now, Customs determines that this is a textile, the importer could be subject to penalties, and to redelivery. Should they have a shipment on the water at the time that the ruling is issued, the shipment may be subject to seizure as noncomplying with the import regulations of the United States.

That is a case history involving an importer seeking to obtain a binding ruling. The second two examples that we have——

Mr. FRENZEL. Say, again, how long that took.

Ms. O'DELL. They have not received a ruling yet. They requested it in July 1987.

Mr. FRENZEL. It was in this decade?

Ms. O'DELL. It was in this decade, yes. Actually, it is still within 12 months, but not by much. The second two samples that we have are examples of products to be imported by one particular retailer. This one is called a sleep shirt. It is made out of polyester satin. It is loose-fitting and it has some small, round pearl buttons.

The importer recognized, because of prior experience, that this type of product has been controversial in its classification. Customs has consistently held—well, consistently been controversial in their interpretation of what is meant by "nightwear". So the retailer took this sample to the National Import Specialist to obtain a decision.

The retailer was told that because of the presence of these round pearl buttons no one would wear this garment to sleep, it would be too uncomfortable. Therefore this is streetwear and it had to be classified as a blouse, and appropriate visas obtained. Naturally, the importer complied.

This second item was imported as lingerie, or the intent was to import it as lingerie. It was to be sold in the lingerie department as ladies undergarments.

On this item the retailer also sought an opinion from the Customs Service, and they were told that, based on the presence of this small, round button, exactly identical except in color to the buttons on the other garment, this could not be an undergarment item, it had to be classified as nightwear because of exactly the same feature that precluded classification as nightwear of the other article.

Mr. FRENZEL. Were those made in the same district?

Ms. O'DELL. Yes. They were both received from the National Import Specialist in New York.

I believe that that example speaks for itself. The third example that we would like to show you is an item which is called in the trade a "jewelry roll".

It is made of polyester. It has a small zipper. It has a couple of small pieces inside. Based on prior experience, and a ruling that the importer knew Customs had issued in 1986, the retailer proceeded on the basis that this would be considered flat goods, that is, a small article designed to be carried on the person, or suitable to be carried on the person, or in a handbag. The retailer contacted their suppliers overseas, and the exporting Government actually refused any other classification for this merchandise. The exporting government insisted that the only possible applicable classification for this merchandise was as flat goods.

When the importer imported the merchandise, Customs informed them that it was luggage. Now, the importer had considered that possibility, but because the examples of luggage given in the tariff schedules included only items with handles—trunks, valises, suitcases, backpacks, and similar items—the importer had concluded that this could not be luggage. In addition, the exporting Government had refused to issue them a visa as luggage, and they had proceeded accordingly.

When the merchandise was seized, it was because of a classification difference, not because the importer had had any intent of evading the quota restrictions or the customs regulations of the United States.

But because Customs chose to proceed on this by seizing the merchandise under the conditions of 1595(a)(c), the importer effectively lost the ability to seek redress through the courts. The retailer could not protest Customs' refusal to release the merchandise.

Here we have three cases: one where the retailer attempted to obtain a binding ruling and was totally unable to do so; the second one, where a retailer obtained a ruling and it was inconsistent; and the third case, where a knowledgeable importer made a very well-reasoned decision, and as a result of that was subjected to penalties, and to treatment as though they had criminal intent when they placed an order for this merchandise.

At present, by the way, the last importer has paid a penalty for the merchandise. But they have not been able to obtain the visa from the exporting country. It is still in Customs' hands and they anticipate having to abandon the merchandise.

The members of the National Retail Merchants Association are legitimate businessmen. They see no profit to themselves in evading the regulations of the United States.

However, as you can see, they have great difficulty in learning beforehand what those regulations are, and the reason that we are pleased to be here today is we want to ask the cooperation of the Congress in assuring the predictability, the uniformity, the consistency, and the reasonability of Customs' decisions.

[The statement of Ms. O'Dell follows:]

STATEMENT
OF
THE NATIONAL RETAIL MERCHANTS ASSOCIATION
ON
CUSTOMS COMMERCIAL OPERATIONS
OVERSIGHT SUBCOMMITTEE
HOUSE WAYS AND MEANS COMMITTEE
JUNE 9, 1988

INTRODUCTION

NRMA is a non-profit voluntary trade association whose approximately 3,700 corporate members operate more than 40,000 department, chain, and specialty stores throughout the United States. NRMA's members sell a wide variety of imported merchandise and so have an immediate and strong interest in the fair and efficient processing of their entries by the U.S. Customs Service.

That interest is more than merely academic. In today's competitive retailing environment, imports play an important and often strategic role for many of NRMA's members. Retailers integrate imports with U.S. purchases to create a merchandising strategy and plan which rests on the strength of its many parts. Delays in obtaining one element of a merchandise assortment can wreak havoc on carefully planned sales projections and pricing strategies.

Retail companies in the business of buying merchandise and reselling it to return a profit to owners and stockholders have a direct interest in minimizing these risks. Retailers want to know and comply with Customs' rules and regulations -- it is in their self-interest to do so.

Unfortunately, honest retailers are now finding it virtually impossible to take such a prudent course. Customs does not communicate its rules clearly; the ports do not enforce the laws consistently, and the Service is frequently unwilling or unable to provide advice to importers who genuinely wish to abide by law. The situation has become emotionally charged on both sides, and NRMA sincerely hopes that this hearing and the Subcommittee's committment to examine Customs Service commercial operations will result in improvements that are long overdue.

In this spirit, we will attempt in this statement to provide case histories, collected from our member companies, that illustrate two critical areas where Congress ought to improve Customs Service operations: (1) The availability of classification rulings; and (2) Enforcement practices.

I. THE AVAILABILITY OF CLASSIFICATION RULINGS

Classifying merchandise -- identifying its nature and its component parts -- is a critical and essential responsibility of the Customs Service. From Customs' viewpoint, classification serves two purposes. First, by giving merchandise its identity, classification allows Customs to assign appropriate duty rates to imports. Second, in the case of merchandise regulated by quota, such as textile and apparel imports, classification allows Customs to determine if a particular item can be allowed into the United States, and which particular quota its entry must be charged against.

Retailers are concerned about classification because it has a profound effect on the cost and delivery of merchandise. The duty rate on a particular item is an important component of that item's cost and must be considered when a retailer opts to purchase abroad. Equally important, a retailer needs to know how a particular item is classified in order to determine which quota governs its importation.

If an importer has a dispute with the Customs Service with respect to the classification of merchandise, the costs can be enormous. Moreover, retailers who make mistakes can find themselves in the unhappy situation of having bought and paid for merchandise that will never be allowed entry into the United States.

When that happens, retailers lose current and future sales. They obviously lose sales on the merchandise affected. But it doesn't end there. Sales are lost on all of the items that have been coordinated with the lost or delayed merchandise. This is particularly true of apparel where items designed to be sold together are bought in the United States and abroad. If one component part is lost or delayed, the remaining part loses much of its commercial value. Future sales on other items are lost because customers arrive at the store and discover a poor merchandise assortment. U.S. suppliers lose out as well on reorders of merchandise that might otherwise have been sold.

Equally important is the fact that disputes -- even regarding relatively minor issues -- can result in costly fines and penalties and the loss of the retailer's reputation for honesty.

Three methods are used to determine an item's classification. First, importers may request a binding ruling from the National Import Specialists in New York. This type of ruling is designed to eliminate the importer's risk. However, Customs takes at least two months, and in some cases years, to issue binding rulings. Second, importers can request a non-binding advisory ruling from the Customs Service -- a process that is by no means foolproof. Trained import specialists are in short supply, and some are reluctant to issue written advisory rulings. Even if an importer obtains an advisory ruling, Customs need not abide by it when the merchandise arrives at the port. Third, importers may attempt to determine a product's classification based on precedent and their own understanding of classification rules. For a variety of reasons, illustrated below, none of these methods is now sufficient to provide retailers with any assurance that they can correctly classify merchandise.

Consider the example of the retailer who wanted to import an item of luggage, its outer surface composed of paper fibers. This was a new item of commerce, and the importer was not certain if this item should be considered a textile item and therefore restricted by quota. Consequently, in July 1987, the retailer requested a binding ruling from Customs to establish a rate of duty and whether the product was subject to textile import quotas. Since the product was still in the development phase and the retailer was not planning to ship for approximately six months, he assumed there was ample time for Customs to rule. Nonetheless, today, nearly a year later, Customs has yet to issue a determination on this product.

In the absence of any help from Customs, the retailer had two choices -- he could make his best guess with respect to the item and import it accordingly, or he could wait for Customs to rule. In this case, the retailer knew if he delayed too long he would be beaten to market by a competitor with fewer qualms, and he might lose his production capability as well. He decided to import, and his first shipment arrived in the United States in December 1987 -- almost six months after he requested a binding ruling.

If the retailer's best guess proves wrong, Customs may demand redelivery of the merchandise and assess heavy penalties. If another shipment arrives after Customs makes a contrary determination, it will be subject to seizure and will be recorded as a fraudulent entry statistic, and the retailer in question will be accused of attempting to circumvent the rules.

Another retailer ordered two garments -- one a blue polyester satin sleep shirt, and the other a black nylon slip -- for sale in the nightwear and lingerie departments of his store. Aware of a history of classification disputes in this area, the retailer requested rulings from Customs to confirm these classifications.

The National Import Specialists inspected a sample of the blue night shirt and decreed that it was a blouse, not nightwear, because it featured rounded buttons that would interfere with sleeping. The importer was irritated and disappointed; the duty rate for blouses is higher and the quota more difficult to obtain. Nonetheless, the retailer complied.

Customs then reviewed the black slip and decided that it was nightwear, not an undergarment. The decision was based on the presence of a small round button, of the same type as the buttons on the blue sleep shirt which Customs had ruled a blouse. Their reasoning was that the slip had to be nightwear because the button was inappropriate for an undergarment.

Taken together these two rulings make very little sense. One garment was classified a nightgown because of a button, another garment was denied that classification because of the very same type of button. If the retailer had been less cautious, and had used an educated guess to determine that the black slip could not possibly be sleepwear because of the button, his shipment would have been subject to seizure and penalties, and would be represented as another fraudulent entry statistic.

In the third example, a retailer's shipment of merchandise was seized and the retailer assessed penalties as a result of a disagreement over polyester "jewelry bags and rolls" from China.

The retailer had classified the merchandise as "flatgoods," which are defined as "small (emphasis added) flatwares designed to be carried on the person," such as "bank note cases, bill cases, billfolds, and ...vanity cases."

This classification was based on two facts. First, the retailer knew that the Customs Service had issued a ruling in 1986 classifying similar merchandise as flatgoods. Second, the Chinese government would only issue flatgood quota visas for this merchandise.

Upon importation, Customs seized the shipment on the grounds that the retailer should have classified the merchandise as luggage which is defined as "travel goods, such as trunks, hand trunks, lockers, valises, satchels, suitcases," and other larger types of bags. A review of the item convinced our member that it was not like the lugagge examples, because it was a small item without handles designed to be carried on the person.

Nonetheless, the retailer could not protest the classification initially, because the merchandise was seized rather than detained and protests are not allowed in seizure cases. The retailer is now considering abandoning the shipment and has already paid penalties equal to 20 percent of the first costs of the merchandise. It is unlikely, in any event, that China will grant this retailer a luggage visa for this merchandise and so in all probability the merchandise is lost.

As if these difficulties in obtaining classification advice from Customs were not enough, in October 1987, Customs proposed new regulations to require importers who receive a so-called "written notice" of a particular product's classification, to use that classification in all subsequent importations of the product or face penalties under Section 592 of the Tariff Act of 1930. On its face, the regulation sounds reasonable, however for the purposes of this regulation a written notice could include scraps of paper stapled to a returned entry, or a rejection notice received only by an importer's broker. But these forms of advice, even though they are written on paper, are not binding on Customs. Officials at one port can and do disagree with officials at another, leading in this instance to the proverbial "catch 22" for the importer who receives two conflicting "written notices" for the same merchandise from two different ports. An importer in this situation simply cannot comply with the proposed rule.

II. CUSTOMS ENFORCEMENT PRACTICES

NRMA recognizes that the Customs service has a legitimate and important role in enforcing the nation's trade laws. But at the same time, Customs also is charged with responsibility for facilitating the flow of legitimate international commerce, and to this end should provide fast and efficient processing of commercial entries. Customs can and must meet both of these obligations to satisfy legitimate importers and law abiding Americans alike.

From NRMA's viewpoint, however, Customs has viewed its twin obligations as mutually exclusive -- as though efficient commercial entry processing will jeopardize enforcement activities.

Moreover, Customs appears to be heading in the wrong direction with its recent rulemaking activities. Instead of seeking a way of balancing its obligations, Customs appears to have decided to get even tougher on importers by attempting to: 1) Lower the standards so that even unintentional errors will be considered commercial fraud; 2) Increase the penalties assessed against importers, even for relatively minor infractions; and 3) Limit or overturn Court of International Trade interpretations of the law in cases where Customs disagrees with an outcome of a case.

A few examples illustrate these concerns.

Definition of Fraud

In December 1986 Customs proposed to amend its enforcement guidelines under Section 592 of the Tariff Act of 1930 to remove the requirement that a "fraudulent" violation of Section 592 be deliberately done with "intent" to commit a violation. As a result, even unintentional errors could be considered fraud by the Customs Service. Moreover, this expanded and unprecedented concept of "fraud" would eliminate by administrative action the careful distinction between "fraud" and the lesser degree of culpability of "gross negligence" established by Congress in its 1978 revamping of Section 592. While Customs has not yet adopted this proposal, it remains a threat to legitimate and law-abiding retailers.

Increased Penalties

Customs has claimed authority under Section 595a of the Tariff Act -- a provision added by the Anti-Drug Act of 1986 -- to seize importations of certain commercial goods. The legislative history of this provision seems to indicate that Congress intended this provision to apply to the importation of merchandise that is expressly _prohibited_ by statute, such as drugs and certain other commercial products. Nonetheless, Customs has applied this provision to importations of _restricted_ merchandise such as wearing apparel subject to quota controls but not prohibited by statute. In NRMA's view, Customs has exceeded it authority in seizing quota-class wearing apparel under cover of Section 595a.

Recent Court Cases

In two recent court cases, the Customs Service has attempted to ignore or limit the consequences of judicial directives with which Customs disagrees. The result of this disregard of the judicial process is that legitimate importers have been forced to litigate and relitigate issues at great expense to themselves and the American taxpayer. Two recent cases are illustrative:

> (1) Over the past several years, Customs has taken a highly restrictive attitude toward classification of ladies' nightwear, insisting that if a garment can _conceivably_ be worn as daywear then it must be daywear, even if its _chief use_ is as nightwear. Customs continues to take this view, despite two Court of International Trade decisions admonishing them that _chief use_, not _potential_ use, is the test for nightwear classification. Because of its refusal to apply this judicial guidance broadly, one of the companies that has successfully challenged Customs' nightwear classification policies in court, St. Eve, has recently had to file yet another lawsuit on the very same issue.

2) In the *McAfee* case, the Court of Appeals for the Federal Circuit affirmed the long-standing precedent that the dutiable value of merchandise intended solely for U.S. export is determined by the *first sale* of the merchandise, even if that sale is to a foreign "middleman." Moreover, the Court specifically admonished Customs that this principle applies beyond the specific merchandise in question, which was made-to-measure clothing ordered by U.S. customers from Hong Kong. Yet one month later, Customs published a general notice in the *Customs Bulletin* stating that the principles of the *McAfee* decision will be restricted to the precise facts of the the case and that, in all other instances, Customs will continue to apply an appraisals policy which examines the *last sale* only. This issue will also result in a second lawsuit.

III. RECOMMENDATIONS

The case histories included in this statement illustrate that many fundamental responsibilities of the Customs Service are not performed in a manner that meets the needs of the firms engaged in trade. Many Customs decisions are arbitrary, contradictory, outside of common sense, and sometimes just not available. The failure to adequately carry out these essential responsibilities has resulted in a vicious cycle within the Customs Service. Reputable importers and retailers are being regularly penalized for minor infractions. Every time a reputable importer is caught committing "fraud" of this nature, it bolsters Customs' apparent view that all U.S. retailers who import merchandise are criminals.

That view is patently absurd. NRMA's member companies are willing to follow the rules when they know them; too often they are severely penalized for operating in a vacuum, or for basing an importing decision on common sense and commercial reality.

NRMA recognizes that part of the problem is one of resources. But additional resources by themselves will not solve the problem. For this reason, NRMA makes the following recommendations:

(1) NRMA urges Congress to require Customs to issue binding rulings within 30 days or accept the importer's claimed classification as binding;

(2) NRMA urges Congress to require Customs to adequately notify importers of changes in binding rulings. In our view this would require written notice to the importer 180 days prior to the date upon which the changes will become effective. We also suggest that Customs publish changes in binding rulings in the *Federal Register* 180 days prior to their effective date. Prior notice is essential, given the long lead times that importers experience;

(3) Because textile and apparel quota categories are based on fiber content -- there are separate quotas for cotton and other vegetable fibers, man-made fiber, and wool -- knowing the fiber content of an item is of critical importance. Fiber testing often leads to classification disputes, and delays. For this reason, NRMA urges Congress to expand the certification of public gaugers under section 151.13 of

the Customs Regulations to encompass textile fiber and feather-and-down content analyses peformed by independent laboratories certified by Customs, so that retailers and importers can have the opportunity to know the classification of an item prior to entering it. Expanded certification for quality and fiber testing has the added benefit of allowing importers to help foot the bill for reasonable and timely product classification;

(4) NRMA urges Congress to insist that Customs abide by Court decisions. Court decisions must be equally binding upon importers and the Customs Service;

(5) NRMA urges Congress to make it clear that importers who rely upon non-binding advisory rulings issued by Customs shall not be subject to penalties if Customs determines that the ruling is incorrect;

(6) NRMA urges Congress to reaffirm its view of Customs penalties adopted in 1978 by defining "fraud" to make it clear that fraud cannot include unintentional errors or mistakes; and

(7) NRMA urges Congress to amend Section 595 of the Tariff Act of 1930 by adding at the end of subsection (c) the following new sentence:

> For purposes of this subsection, the term 'any merchandise that is introduced or attempted to be introduced into the United States contrary to law' shall mean merchandise the importation or introduction of which is expressly declared by statute to be prohibited or unlawful.

In NRMA's view this change would make it clear that importations of textiles and apparel are not covered under the seizure provisions of section 595a.

Mr. **Frenzel**. Thank you very much.

Any other comments?

Mr. Langlois.

STATEMENT OF JAMES A. LANGLOIS, EXECUTIVE DIRECTOR, NORTHWEST APPAREL AND TEXTILE ASSOCIATION

Mr. **Langlois**. Mr. Chairman, my name is Jim Langlois, and I'm the executive director of the Northwest Apparel and Textile Association in Seattle, WA.

Like Ms. O'Dell, I will try to summarize my testimony and just hit some of the high points, because many of the points I would make have been covered by the witnesses.

Before I get into some specific examples, however, of problems that we've encountered with Customs, I would like to give you just a little explanation of why time is so important to our industry and why some of the unnecessary delays that we think we encounter at the Customs Service prove to be very costly for our members.

Our members, incidentally, are all either directly or indirectly involved in the imports of textile and apparel products which, in the Seattle/Tacoma area, amounts to about $4 billion a year. So it's a fairly significant volume coming through our region.

While there are a lot of advantages to living in the Pacific Northwest, one disadvantage we suffer is we have a very small population base so we have to move those goods very quickly through the Ports of Seattle/Tacoma, and on to the markets east of the Rockies. And a delay can be very costly.

We have a bit of a competitive advantage in that we have about a day and a half sailing time advantage over, say, a southern California port. So, to take advantage of that competitive nitch in the market, we have to move very, very quickly.

That day and a half may not seem like a lot but, in our business, which is a high risk business, time is critical. We're dealing in many respects with a perishable product, and a day and a half delay can be the difference between success and bankruptcy.

Our customers, for importers, are primarily retailers, and the retailers are also having to predict, like us, what consumers are going to be buying a couple of seasons into the future. They like to pass on as much of the risk as they can to us, so they set very strict delivery deadlines. And if we miss a deadline, even by as little as a day, we at the minimum face price markdowns and can even lose the sale altogether.

The final hurdle we typically run up against, and we're planning nine months to 12 months, if not more, in advance for these customers—the final hurdle is the U.S. Customs Service. And while I would like to say that I think we work pretty well with the Customs Service, we have companies like Fingerhut from other parts of the country who like to take advantage of the Seattle district and the good working relationship that we have there, but we do encounter problems.

We do run up against inspectors who at times, it seems, have a special interest in textile and apparel importers, but those are the exceptions. We think the real problem has to do more with the system itself, the complexity of the system and the sheer volume of textile and apparel imports coming through our ports and other ports.

We are, as you know, one of the most heavily regulated commodity groups in the United States, if not the most heavily regulated. Not only do we have quota limitations and duty rates, but we also have volumes and volumes of regulations about labeling and ornamentation of fabrics and fabric content, and coatings and such. So it's not an easy field to work in.

We work very, very hard to cooperate with Customs to find out what the rules of the game are and to comply with those rules. But sometimes that's just not enough. We even go so far as to plan typically to allow for 5 days of clearance time with Customs, which we feel is frankly too much time to clear goods, but allowing 5 days, and we still encounter what we consider to be unnecessary delays.

I'd just like to give you some examples very briefly of the types of delays. These are by no means isolated cases, but show, I think, a pattern of problems that we encounter.

First, I'd like to talk about sample shipments. As I mentioned, we're selling into the future. An importer doesn't want to produce goods in advance of getting orders for those goods, so they rely on samples of the merchandise for their sales force to show to the customer.

The Customs Service allows you, or the U.S. Government allows you, to bring samples in and avoid certain other requirements if you can prove that they are in fact samples. And that typically involves mutilating the garment so that it can't be sold on the retail shelf.

The mutilation of a shirt, for example, involves putting a hole in the shirt that's visible to the eye, roughly the size of a quarter, approximately an inch in diameter. I brought to you this one sample of a shirt. This is the hole that was cut into the back of it, which makes it obvious that this is not intended for commercial purposes.

There are other ways of mutilating a product. But I just use this as an example.

The sample shipments can be very small, and they may be hand carried by a buyer coming back from the Far East, or they may come in a shipment as large as say 1,500 with maybe 100 different styles with 15 samples of each. And they are typically arriving at the very last minute in advance of a preseason sale show so that the salesperson can go out and show these to a buyer and hopefully make the sale. And without the sample, you just can hardly ever make the sale.

The problem is we find that Customs routinely spends an inordinate amount of time going through these sample shipments looking for samples that have not been properly mutilated, where the hole might be too small, or where perhaps in a shipment of 1,500, perhaps where one or two somehow weren't mutilated. And what often happens, they'll seize the whole sample shipment and hold it up. They won't allow you to mutilate the product. They hold up the whole sample even if there's only one garment in there that's in the whole shipment, and it creates tremendous problems for our members who are trying to make sales with these samples and may spend weeks trying to get those samples out.

We think that that's a very poor use of their time to be going over samples like this with a tape measure to make sure a hole is 1 inch in diameter, or to seize a whole shipment of samples simply because there's one garment in the sample that does not have the proper size hole in it.

Chairman Pickle. Will you let me interrupt you?

Mr. Langlois. Please, sir.

Chairman Pickle. Do they measure a lot of those different shirts or uniforms?

Mr. Langlois. It's my understanding that they frequently look at every garment in the sample and measure the holes if there's any reason to believe that the holes aren't—

Chairman Pickle. Not just take a look but measure each one individually?

Mr. Langlois. That's my understanding. That's frequently the case.

Chairman Pickle. How many examinations would that mean in a given shipment?

Mr. Langlois. Well, if it's a small shipment, a hand carried shipment, that might not take a great deal of time.

But if it is a shipment of, say, 1,500 shirts,and even if they're only measuring 10 percent of them, it's still going to take some time to check the size of each of those holes. And even to look at each one to make sure that the hole is there is going to take a considerable amount of time.

Chairman Pickle. Thank you.

Mr. Langlois. The second example I'd like to cite is the problem we have with labeling requirements. We deal with hundreds of pages of requirements about labeling, the country of origin, the size of the garment, the cleaning instructions and other information that must appear on the garment.

It's a little frustrating frankly, because while the Customs Service is vigorous in their enforcement of these regulations, we know that domestic producers don't suffer that scrutiny at all. In fact, there really is no regulation of other nonimported items to make sure that the labeling is in fact done properly.

As an example, one of our members, in 1986, imported 20,000 coats from overseas, which cleared Customs. The coats were sent on to a warehouse in Spokane. Several days later, they received a notice from Customs. Fortunately, this was before the coats had been shipped on to the customer. The Customs inspector, after looking closely, found that in one of the labels, the importer had misspelled the word "acrylic," and had spelled it "actyllic." Now, this is hardly a serious error. It was obviously a typographical error, but Customs decided—they instructed the importer they could not sell those coats until the label had been changed. The importer spent a great deal of time negotiating with Customs, with the Federal Trade Commission. They finally agreed that they would let them put a sticker on the label of the coat saying that, in fact, it was acrylic and not actyllic in the cuff, and that they could then release the goods. But, first, they had to send two inspectors out from Spokane to inspect to make sure that in fact these labels had been properly applied. That resulted in a considerable delay. The importer, missing delivery deadline, had to take a big mark-down on the coats and had other costs associated with applying that sticker.

This again is just an example of what we see as overkill. A poor use of their time for a problem that really didn't do any real damage to U.S. consumers or to commerce in general.

A third example I'd like to cite is a problem with fabric testing. The fabric content of a garment in our industry has a lot to do with both the duty rate and the quota category. So there's potential for abuse in this category, and Customs justifiably has to check to make sure that importers aren't misrepresenting the fabric that the garment is made of.

The Customs specialists, import specialists, are trained to recognize the most basic fabrics. But they often have to rely on a Customs laboratory if they feel that the fabric is not consistent with the documentation.

Unfortunately, there's a 60-day backlog right now at the Customs laboratory. So if they decide that they don't believe that the fabric is as reported and they want to send the sample to the Customs lab, the shipment can be held up for a long period of time while they test that fabric.

We had an example late last year where one of our customers, a small company, had a $5 million shipment held up while Customs took 50 samples from 50 different shipments and sent all 50 for separate testings at the Customs lab in San Francisco. They held them up for several weeks. They missed their delivery deadline. It resulted in a considerable cost, and the results proved that the fabric was as the importer had reported.

Another case, another company had a $2 million shipment held up for a week, same result. And these are not fly-by-night importers who were trying to sneak anything by. They were just caught up in a net that Customs threw out for everyone, or that caught everyone, even though they were essentially trying to catch the cheaters.

Simply by letting importers pretest at private labs, which Customs will not sanction, by pretesting garments and being able to show the results to Customs, we think we could avoid that problem. Or if Customs would allow, even once the shipment arrives, to let private labs do some of this testing, that would eliminate much of this backlog and could move these goods on.

At the minimum though, we don't believe they should be able to hold up entire shipments while they test a sample from a shipment to see if in fact the fabric content is correct.

The last example I was going to touch on is the weight of garments and the problems we've had with overweights. And I think Fingerhut and others have talked about that.

I would just simply say that there's a great deal of variation between the way inspectors check the weights. And unless the importer knows how the weights are going to be checked, it's very hard to get your reported weight to match up with the weight determined by the Customs inspector.

The simplest solution to this problem, we feel, would be to eliminate quotas based on weights. And if you've got to have quota allocations, base them on quantity and not weight.

If we can't do that, there should be some uniform procedures for weighing garments, and the importer should be told what those procedures are.

It's worth noting, I think, Mr. Chairman, that Customs requires that all importers post a bond to protect them from importers skipping out on duties or penalties. And with that protection, it seems in most cases they ought to be able to release garments, even if they are going to test to see if there are in fact some problems.

A little bit of flexibility would prevent a lot of the problems. But the real solution I think is that the rules of the game have to be made available to people. They have to be applied reasonably, and we have to know what they are.

Thank you, sir.

[The statement of Mr. Langlois follows:]

TESTIMONY BY

JAMES A. LANGLOIS

BEFORE THE

OVERSIGHT SUBCOMMITTEE, HOUSE WAYS AND MEANS COMMITTEE

Mr. Chairman and members of the Subcommittee:

My name is Jim Langlois and I am the Executive Director of the Northwest Apparel and Textile Association, a non-profit trade association based in Seattle, Washington.

As you will note from the attached list, our membership includes apparel importers and retailers, public ports, Customs brokers, steamship lines, railroads, trucking firms, banks and other firms who have a direct or indirect interest in imports of textile and apparel products. Most--as you will note--are headquartered in the Pacific Northwest, which may seem like an unlikely spot for fashion oriented companies to locate. You might also be surprised to know that more than $4 billion worth of textile and apparel products are imported each year through the ports of Seattle and Tacoma, which ranks us third behind New York and LA/Long Beach as an apparel importing region.

It's no accident that we have become the fastest growing region in this industry. The reason for this is quite simple if you look at a map. Although we are many miles away from most domestic apparel producers and from the major U.S. markets, we are approximately a day and a half closer by water to Hong Kong, Taiwan, Korea, China and the other textile and apparel producing countries in Asia.

That day and a half jump over importers in other parts of the country can be extremely important in the time-sensitive apparel industry where fashion trends can change overnight. Unfortunately, all too often this competitive advantage is lost because of unnecessary delays in clearing goods through U.S. Customs.

Before I mention specific examples of the types of problems we have with Customs, I would like to give you a little more background on our industry to explain why time is so important to us.

The Northwest fashion apparel industry got started when one of our members decided in the late 1970's to bring in a few cartons of blue jeans from Hong Kong. That first small shipment--which were produced under the Brittania label--sold well and, as the designer jean wave swept the country, imported jeans quickly found their niche in the market. Brittania's imports took off and, as others within Brittania learned the ropes of importing, new companies were started in the Northwest by these graduates of "Brittania U" as it was called.

However, it didn't take these entrepreneurs long to figure out that there weren't enough customers in the Pacific Northwest to consume all of the jeans that Hong Kong and others could produce, much less the sweaters, skirts, and jackets that these companies were itching to sell. Furthermore, by that time, importers in other parts of the country had discovered the advantages of producing offshore. So, to protect that day and a half advantage over importers using a Southern California port, Northwest importers had to learn how to move products quickly from the ship by truck or rail to customers east of the Rockies. Fortunately, we have highly motivated and productive dockworkers, sophisticated container handling facilities, and superb rail linkages to interior U.S. points.

While a day and a half may not seem like much of an advantage, it is often the difference between success and bankruptcy in the high-risk fashion industry. Our customers are retailers who must place their order three to six months in advance to allow enough time to promote the product and get it on the shelves. Consumers, however, are unpredictable which means that the sweater that looked like a real winner in April could turn out to be a real dog by September. Consequently, since the retailer has to guess what's going to sell one or two seasons in the future, he likes to pass on as much of the risk as possible to the importer. One way to do that is to set strict delivery deadlines for merchandise. If an importer misses deadline--even by a day--he faces price markdowns at the minimum and possibly cancellations of orders.

While the retailer must project three to six months in advance of a season, an importer must project nine months or more into the future because of the longer lead time required to get goods produced offshore. And, even though most importers rely on the most sophisticated communication technology and on overseas representatives to keep track of production schedules, problems inevitably develop along the way. By the time the goods are loaded on the boat, there is seldom any slack left in the schedule.

The final hurdle is the U.S. Customs Service.

For the record, I want to make it clear that my comments are not intended to be critical of individuals within the Customs Service, particularly those in the Seattle district area. In fact, one of the main reasons our industry has been able to grow so rapidly is because of the good working relationship we have with the Seattle district personnel.

Yes, there are some Customs inspectors who seem to single out apparel importers for special attention just as there are some importers who try to bend the rules. But that's not really the problem. The problems we generally encounter are systemic in nature. They are related to the sheer volume of entries of textile and apparel products--$4 billion a year in Seattle/Tacoma alone,--and with the complexity of the regulations applied to this commodity.

As you all know, textile and apparel products are by far the most regulated import commodity with strict quota limitations, high duty rates, and volumes of complex, if not arcane, regulations about labeling, ornamentation, fabric content and coatings.

We and our member companies spend an inordinate amount of time and money trying to keep up with these regulations. Every company--regardless of their size--has one or more people with specific responsibility for working with Customs regulations and personnel. Almost all utilize Customs brokers to handle the paper flow through Customs and many have Customs attorneys on retainer. Our organization also has a Customs specialist on retainer to advise our members on new Customs policies and procedures. We also have a special Customs committee which meets regularly with our local Customs district personnel to discuss policies and procedures.

In short, we bend over backwards to try to do it by the book. The stakes are too high to ignore the rules or, worse yet, to try to take shortcuts.

Most of our members also presume the worst case scenario and allow at least five days in their planning for clearing goods through Customs.

Unfortunately, costly delays inevitably occur. Every apparel importer I know has a litany of horror stories about Customs related delays. In almost every case, these were unnecessary delays where Customs could have processed the shipment quickly without compromising in any way their role as the enforcer of these regulations.

Let me cite some specific examples:

1. Sample Shipments

As I explained earlier, orders are placed by retailers well in advance of the selling season. The importer, of course, cannot afford to produce the garment until he has orders so he relies on a sample of the product from the overseas factory. These samples are very expensive to produce so the minimum number are produced for the sales force.

However, to make sure that these samples do not end up on the retail shelf, the Customs Service requires that they be properly mutilated. By definition, this means they must have a hole at least one inch in diameter cut into the outside of the garment.

These samples are usually shipped by air freight from the factory just prior to major pre-season sales events where buyers from the department stores meet with sales representatives from importing companies and domestic producers to place their orders for the upcoming season. Without the sample, it's nearly impossible to make the sale.

Because samples are so critical to the sale, importers are very careful to make sure that the factory understands the need to put a big enough hole in the sample garment. In most cases, the instructions are followed. However, when you're dealing with non-English speaking workers in factories in distant lands, mistakes are going to be made.

Unfortunately, some Customs personnel seem obsessed with the notion that samples are going to be sold and spend hours and hours going over every sample in a shipment with a tape measure to make sure the hole is at least one inch in diameter. And if by chance, an inspector finds one garment in the bunch with a hole too small--even a fraction of an inch--the entire shipment is seized.

To us, this seems like a clear case of overkill on the part of the Customs Service. Unless there is some history of problems with an importer or other compelling evidence of an attempt to defraud the Government, it seems like misplaced priorities for an inspector to spend this much time measuring the size of holes with a tape measure. Furthermore, we believe it is excessive to seize an entire shipment of samples because one garment in the carton has a hole that is one eighth of an inch too small.

It would seem that there are some more reasonable alternatives available which take into account the needs of the apparel importer to get their samples in without compromising Customs' role as an enforcement agency. For example, the inspector could cut the hole or let the importer cut the hole and then release the sample. Or, they could release the other samples in the shipment. Or, they could impose penalties, even stiff fines for repeat violations.

Here's another fairly typical example of misplaced priorities and excessive penalties.

2. Enforcement of Labeling Requirements

As I mentioned, importers must deal with hundreds of regulations related to the proper labeling of the garment--the size of the garment, fabric content, cleaning instructions, country of origin and other information. Some of the regulations are straightforward while others are complex and confusing--such as specifying where on the garment the cleaning instructions must go. Some, in fact, are just plain nitpicky.

It's also frustrating to importers who realize that while the same regulations ostensibly apply to domestic producers, there is no real enforcement of them. So at times, the enforcement of these requirements by Customs seems to border on harassment.

Like the earlier cited problem with sample shipments, the amount of time spent in enforcing these regulations also seems like a misallocation of scarce resources and the penalties for simple mistakes often seem excessive.

As an example, in 1986, one of our members--Pacific Trail--imported 20,000 coats which cleared Customs in Seattle and were shipped on to their distribution center in Spokane. Several days later, Pacific Trail received a notice from Customs indicating that upon closer inspection the inspector had found that one of the labels on the coats said "knit cuff and band 100% actyllic," not "acrylic" and that the label would have to be corrected before the coats could be sold.

Fortunately for Pacific Trail, these coats had not yet left the warehouse and, after extensive negotiations with the Federal Trade Commission and the Customs Service and considerable delay, Pacific Trail was told that instead of changing the label they would be allowed to place a sticker on the coats saying that the cuff was in fact acrylic and not actyllic. However, before releasing the merchandise, Customs sent two inspectors to Spokane to individually check these 20,000 coats to make sure that the stick-on labels had been applied.

This delay in shipment meant that Pacific Trail missed their delivery deadline and had to lower the price of their coat. It also cost them several thousand dollars in additional labor and printing to correct the problem. This simple mistake also resulted in a considerable expense to the U.S. Government for no discernable benefit.

While it could have been even more costly to both parties, wouldn't it have been a lot simpler given the nature of the mistake to simply point out the mistake and/or assess a fine?

Or, more fundamentally, should enforcement of these complex and sometimes pointless labeling requirements be the responsibility of Customs? If so, shouldn't the labels on domestically produced goods receive the same scrutiny by the Federal Trade Commission or some other regulatory agency?

Other delays for importers are caused by understaffing or inadequate resources.

3. Fabric Testing

The fabric content of a garment affects both the duty rate and the quota category for that garment. Consequently, importers must be very precise in reporting the nature of the garment. There is, admittedly, considerable room for abuse in this area. By improperly reporting the fiber content, a dishonest importer can bring in a garment at a lower duty rate. Likewise, a dishonest factory manager without the available quota allocation from his Government may attempt to avoid quota restraints in some fabric categories.

Customs import specialists are trained to recognize most basic fabrics and rely on field testing kits--basically a microscope--to examine garments closely where there is some doubt about the fabric content. When there is still some doubt, a sample is usually sent to the Customs laboratory for more extensive testing.

Late last year, Customs decided to crack down on fabric fraud--a "zero tolerance" fabric testing blitz, you might call it. One of our smaller member companies--Blooming Step, Inc.--had more than $5 million worth of garments held up for three weeks while Customs took 50 samples from 50 separate shipments and conducted 50 tests at the Customs lab in San Francisco. No one at Customs would tell him why his goods were being held or when they would be released. Some couldn't even tell him where they were.

As it turned out, all of the tests confirmed that the importer had correctly reported the fiber content. By that time, of course, Blooming Step, Inc., had missed their delivery deadline and had to mark down the price before the retailer would take them.

This was not an isolated case. Another one of our member companies--Generra Sportswear--had a $2 million shipment held up needlessly for over a week while fabrics were tested.

These are not "fly by night" importers with a history of problems with Customs. They were simply caught in the net thrown out by Customs to catch the cheaters but, as a result, suffered financial losses even though they had done everything by the book.

To avoid problems like these, importers are encouraged by Customs to test their fabrics in advance. Unfortunately, the Customs laboratories are so backlogged that they will not test samples sent by importers. And, although there are private labs all over the country capable of conducting fiber content tests, Customs will not officially accept results from any laboratory other than their own.

One solution, it would seem, would be for the Customs Service to certify some private labs around the country so that importers could pre-test samples and present the lab results when the commercial shipment arrives. Given the constant backlog at the Customs laboratories, these labs could also be called upon to conduct tests of garments from commercial shipments.

Finally, we do not believe Customs should be able to hold up entire shipments while fabrics are being tested. If lab tests show that there was some error in reporting fiber content, penalties can be assessed after the fact.

My final example is related to inconsistency on the part of Customs inspectors.

4. Determining the Weight of Shipments

As you know, nearly all garment imports from Asia are subject to quota limitations. In most cases, these limitations are expressed in quantities--dozens or square yard equivalents. Some, like belts, are regulated by their weight.

The Customs Service has very sophisticated scales to weigh garments. No one disputes their accuracy. Unfortunately, there is considerable inconsistency in the way in which they are used.

For example, for a shipment containing 100 dozen women's skirts with belts, a Customs inspector might weigh a small, a medium, and a large sample out of the shipment and multiply that by 400 to come up with a weight for the shipment which is then compared against the weight reported by the importer.

Another inspector might take one medium size out of the shipment and multiply its' weight by 1200.

Another might take a package containing a dozen medium sizes wrapped in plastic and weigh them, package and all.

Another might remove them from the plastic before weighing them.

Obviously, depending on the approach taken, the results can be quite different. However, if the weights don't match with the weight reported by the importer, the shipment can be seized.

Importers face other "weighty" problems trying to figure out how to report this information. For example, some fabrics will absorb moisture in transit, particularly if they are produced in tropical areas like the Philippines. Also, some exporting countries, like China, don't have sophisticated scales to match those used by the Customs Service.

The simplest solution to this problem would be to do away with quotas based on weight and replace them with quantity limitations.

If we can't do that, there should at least be a uniform procedure for weighing garments and importers should be told what the procedure is.

Finally, given the other problems of weather and unsophisticated scales overseas, it isn't fair to delay shipments simply because of the discrepancies in the weight. As with the other examples, shipments should be processed quickly, problems or discrepancies noted and then the goods should be released, with penalties applied afterwards.

To summarize, Mr. Chairman, we work in a high risk industry where a delay of even one day can be very costly, if not disastrous financially. While we would like to see all of the import barriers removed for apparel products, we realize that is not likely to happen. We also understand the role of the Customs Service in enforcing these import regulations.

It's worth noting that all importers are required to post bonds of sufficient value to prevent them from skipping out on duties or penalties. That alone should make it possible for Customs to release goods quickly in most cases, even if there is some possibility that penalties may be applied later.

A little flexibility would prevent a lot of the costly delays we encounter. But at the minimum, we ask that the rules of the game be reasonable, that we be told what they are, and that they be consistently applied.

Thank you.

Chairman PICKLE. Thank you.
Mr. Pellegrini.

STATEMENT OF JOHN B. PELLEGRINI, DIRECTOR AND CHAIRMAN, CUSTOMS POLICY COMMITTEE, AMERICAN ASSOCIATION OF EXPORTERS & IMPORTERS

Mr. PELLEGRINI. My name is John Pellegrini. I'm an attorney with the law firm of Ross & Hardies. I appear today as the chairman of the Customs Policy Committee of the American Association of Exporters & Importers.

We are pleased to have this opportunity to address the operations of the Customs Service. AAEI members deal with Customs on a daily basis and their operations, and the way they operate are very important to the association and its members.

Our written submission, which we assume will be placed in the record, covers a wide variety of issues, including the improper emphasis on enforcement at the expense of commercial operations, inadequate staffing, misuse of section 595(a), increased costs because of the misuse of 595(a), the overuse of seizure versus detention, for example, lack of uniformity, and lack of notice.

Our oral statement will not hit all of these because many of them have been addressed by other testimony today. We'd like to hit a few points which haven't been emphasized as much by other people, particularly the areas of inadequate staffing, lack of notice, and lack of uniformity.

AAEI is encouraged by the increased resources provided in the 1987 budget, and the mandate contained in the Senate report that the administration desist from again attempting, as it had with previous appropriations, to cut the budget of the Customs Service through unilateral deferrals and rescissions that run counter to the expressed will of Congress.

We're a little distraught, however. We don't think the 1987 staff levels were good enough. Customs clearly needs more people. They have a tremendous task in terms of narcotic interdiction and in connection with their commercial operations.

I think one thing that the inspectors who spoke before us, one of the few things we could agree with, is that Customs hasn't adequate staffing to do their job properly.

Keep in mind that in fiscal 1987, for example, Customs collected over $16 billion in revenue for the General Treasury. Almost all of that, $15.5 billion, was due to its commercial operations. In other words, Customs collects at least $25 for every dollar it spends on commercial operations.

The U.S. Customs Service is a substantial revenue generating agency which realizes over 2,500 percent return on its operations, and has clearly not even begun to reach the point of diminishing returns.

AAEI urges this committee to ensure that the trade community receives the adequate service for which it pays so dearly. And these figures do not include the merchandise processing fees. They are simply duties as I understand it.

Our submission also addresses certain aspects of Customs' commercial operations, which we think they do a fairly good job. I won't talk about that, however.

We agree with Customs that automation is helpful. It can result in efficiencies and better use of human resources. However, given the ACS's current projected capacity, it cannot replace qualified import specialists or inspectors. A computer program cannot examine goods. It can't classify merchandise and can't issue rulings. Customs should be applauded for its efforts to bring Customs into the 20th century, but it must recognize, and this is something I'm afraid it doesn't recognize, machines can only assist in the human functions such as inspection and analysis. Machines can't replace qualified experienced personnel to perform those tasks.

We don't see Customs' clearance as being anything but a labor intensive task.

To be perfectly frank, AAEI members aren't real crazy about Customs' enforcement activities. Member of AAEI are citizens, however, and they, as well as the rest of us, have a great stake in drug enforcement.

AAEI members also have a great stake in effective commercial enforcement because honest importers are at a disadvantage when competing with dishonest importers. So it's important to us, as is to the Customs Service in terms of revenue collection, that dishonest importers be put out of business. We can't compete with them.

Some people will say that because people like us are complaining about Customs' enforcement policies and procedures, that those procedures must be worked in well. I'm afraid that isn't really the case.

One of the big problems with customs' enforcement these days is that many importers are afraid to cooperate with Customs. They are afraid if they go to Customs with a problem, the reaction will not be what it was maybe 4 or 5 years ago. This is a problem, this is how you solve the problem. They are afraid now that if Customs comes up with a problem, it's an automatic penalty, it's an automatic seizure. But there isn't any give in terms of realizing that a trivial error might in fact be a good faith error and not an intentional attempt to violate the law, to evade duties, or to evade quota restrictions.

Another thing that importers are concerned about and upset about is that it is importers who are funding all these enforcement operations. A big chunk of the monies that come out of the payment of the merchandise processing fees are used not to facilitate commercial operations but to fund enforcement activities. That's not what we thought the merchandise processing fees were all about, and we think that Congress needs to do something about that.

Intensive examinations. The inspectors who testified earlier said there were too few intensive examinations. Well, we don't think that's true. We recognize, of course, that intensive examinations are necessary and they're a fact of life.

But why do importers have to pay for them? If an importer's number comes up on the computer, for whatever reason, perhaps through no fault of their own. Perhaps it's because left-handed gloves from Nepal are something that Customs is going to look at intensively for the next two weeks.

An importer bringing in say 10 containers of those garments will have an intensive examination. In some ports, that's going to cost them $15,000 to pay the longshoremen to devan the cargo. That is paid for by the importer, by the individual importer. It is not paid by the Government or anybody else.

We believe that it's appropriate to use the merchandise processing fees to pay for those examinations so that individual importers aren't faced with that sometimes very extensive and very substantial additional cost that they could not have planned on in setting their prices.

I mention inadequate staffing. We are gratified that the number of inspectors and import specialists has increased recently. More are needed to process merchandise efficiently, particularly if, as many Customs officials think, that more inspections are going to be necessary.

I would urge you to consider the testimony that was given before the House Merchant Marine and Fisheries Subcommittee on the zero defects program and the effect it's had on commercial fishermen in this country. I happened to see some of those hearings on CNN, I think it was, last week, and it struck me that the things that those people were complaining about were things that have happened to importers over the last 5 years. The seizure is made. It takes weeks, months, perhaps longer before Customs decides that in fact there was no basis for the seizure. In the meantime, the price may have dropped out of the market, delivery dates aren't met, et cetera, et cetera. The importer has lost a great deal of money through absolutely no fault of his own, and there has been really no effective enhancement of Customs' enforcement activities.

Rulings are another problem, as other people have suggested. We took a look at the series of Harmonized System rulings that Customs issued and published. Something they don't do any more these days either. And we looked at about 6 months of those published rulings since they were published in a convenient manner.

It turns out that roughly 21 percent were issued within 3 months of the ruling request. Now, these are headquarters office rulings as opposed to New York regional rulings which are, in most cases, issued much more quickly. The average there is probably between 30 and 60 days. It is much worse at headquarters.

As I said, 21 percent within 90 days, 32 percent within 180 days, 6 months; 36 percent between 6 months and 1 year, and 10 percent over a year. That's simply too long. Very few importers have a year's lead time in order to get a ruling to determine what the duty rate will be on the merchandise or, more importantly, whether it's subject to a quota and, if so, which quota.

Another problem we see is the failure of the Customs Service to adequately inform the public about what they're doing. Just to give you a recent example, apparently in the early part of May, Customs operations out of headquarters issued a new country of origin marking directive to go to inspectors to tell them how to enforce the country of origin marking laws in connection with certain merchandise.

It's come to our attention that there are errors in there having to do with rulings that were issued back in 1986 which were later rescinded. The Customs Service won't make that directive available. Nevertheless, inspectors are expected to use it in order to determine whether merchandise should be detained or seized.

If the goal of the Customs Service is to enforce the law, one of the things they have to do is tell the public how they're interpreting it. And it seems to me it's silly and counterproductive not to make the document available. If there are enforcement aspects of the document, well, they could easily delete those. All we want to see are what they feel are the correct country of origin marking requirements. If they're wrong, we can go and we can discuss it with them. But if only inspectors know what they are, essentially all the Customs Service is doing is playing a game of gotcha. It's catch 22. It's not right. There should be more notice.

I think that should wrap up our oral statement. We appreciate the opportunity to speak to you today, and assure you that we feel that your work here is very, very important.

[The statement of Mr. Pellegrini follows:]

STATEMENT OF JOHN PELLEGRINI, AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS

Good Morning, Chairman Pickle, members of the Subcommittee. I am John Pellegrini, partner in the law firm of Ross & Hardies. I am a Director of the American Association of Exporters and Importers (AAEI) and also Chairman of its Customs Policy Committee. AAEI is a national organization of approximately 1200 U.S. firms involved in every facet of international trade. Our members are active in importing and exporting a broad range of products including chemicals, machinery, electronics, textiles and apparel, footwear, foodstuffs, automobiles, and wines. AAEI members are also involved in the service industries which serve the trade community such as customs brokers, freight forwarders, banks, attorneys and insurance carriers. AAEI is a close observer of the U.S. Customs Service policies and practices in its ports nationwide.

We are pleased to have this opportunity to address the operation of the U.S. Customs Service. The management and oversight of Customs' commercial operations are of great concern to AAEI, as our members deal with U.S. Customs on a day-to-day basis.

AAEI and Customs have always dealt with each other in a direct, honest, usually harmonious, and always mutually respectful, manner. Due to this longstanding relationship, AAEI does not hesitate to point out problems to or ask questions of Customs. We believe both sides, as well as the public, greatly benefit from this exchange and we are pleased to say that, through discussion, many specific problems are resolved. Although many of the smaller problems and a few of the larger problems are resolved, Customs and the trade community face greater difficulties every day. Statement of the problem is simple: increased emphasis on narcotic interdiction and an unhealthy concentration on commercial enforcement have led to neglect of the commercial trade facilitation responsibilities of Customs.

AAEI sympathizes with the Customs Service. In spite of increased demands for drug interdiction, increased emphasis on commercial enforcement (especially in the areas of textiles, apparel and steel) and more and more entries to process, the Customs Service and the trade community continually have to fight for increased staffing.

Although AAEI is encouraged by the increased resources provided in P.L. 100-202, The Omnibus Budget Reconciliation Act of 1987, and the mandate contained in the Senate Report that "the Administration desist from again attempting, as it has with regard to FY1987 appropriations, to cut the budget of the Customs Service through unilateral deferrals and recisions that run counter to the expressed will of the Congress", we take exception to the idea that the 1987 staffing and resource levels were adequate. In fact, the opposite is true. Customs' commercial operations were inadequately staffed and neglected in 1987.

In Fiscal Year 1987, Customs collected over $16 billion dollars in revenue for the General Treasury. Over $15.5 billion was due to commercial operations. In other words, Customs collected approximately $25 for every $1 it spent on commercial operations. The U.S. Customs Service is a revenue generating agency, an agency which realizes over 2500% return and has not yet reached the point of diminishing returns. AAEI urges this Committee to ensure that the trade community receives adequate service for which it pays so dearly.

Importers, exporters and other members of the trade community appreciate the difficulties facing the Customs Service and are anxious to work with Customs to improve its efficiency. AAEI consistently asks Customs what they are planning and how AAEI can help the Service to achieve its goals. Through this continuous dialogue, AAEI is closely exposed to the best and worst of Customs commercial operations. What AAEI hopes to emphasize today is that it is not a question of balance. The successful programs that Customs has developed and implemented should set the standard for all their programs. Efficient and quick commercial trade processing, minimal cost to the exporter or importer and a respect for the legal rights of U.S. persons should be the rule -- not the exception -- of Customs commercial operations.

POSITIVE ASPECTS OF U.S. CUSTOMS COMMERCIAL OPERATIONS

AAEI has supported and continues to endorse Customs' efforts to streamline and renovate its operations, to bring Customs into the 20th Century and prepare it for the 21st. The Service's review of its practices and procedures in the context of how best to meet the demands of the present day trading system -- known as "Day One" -- is an important and long overdue step. The "Day One" process led Customs to commission a study of its commercial operations and the needs of the trade community.

AAEI agrees with many of the procedures and goals outlined in the study known as the "McKinsey Report". Much of the Report is predicted upon the principle -- which AAEI has long held -- that the more information and certainty the importer has regarding its dealings with Customs, the easier it is for Customs to do its job. The recommendations in the Report have the potential to substantially increase Custom's efficiency and reduce importers' costs.

Before adressing certain aspects of the McKinsey Report, AAEI states a caveat. Many of the programs envisioned in the Report are prejudiced toward larger companies/importers. It is important that all importers and brokers, regardless of size, be able to participate in, and take advantage of, new Customs programs and have equal access to Customs' information.

AAEI is pleased to report that the Service is keeping us well informed on certain new initiatives. EDIFACT is an international syntax system given priority by Customs which will allow the importer or broker to transmit electronically data contained on the invoice directly to Customs. An international, electronic standard format for invoices should increase the speed and efficiency of clearing goods through Customs if implemented properly and in close cooperation with the trade community.

Most of the McKinsey Report urges Customs to capitalize on the opportunities to automate in order to decrease paperwork. Customs is urged to expand ABI, eliminate paper back-up copies, accept electronic commercial invoices, facilitate the development of electronic visas and pursue other avenues to increase Customs efficiency in its commercial operations. The members of AAEI agree with these stated goals but are worried about the procedures Customs may use to acheive these goals. The Customs programs described in the Report should not be forced down the throats of U.S. businesses that import. Instead the programs should be developed and instituted with business input.

AAEI agrees with Customs that automation can result in efficiencies and better use of human resources. However, given the Automated Commercial Systems' current and projected capabilities, it cannot replace qualified import specialists or inspectors. A computer program cannot examine goods, classify merchandise or issue rulings. Customs is to be applauded for its efforts to bring Customs into the 20th century, but it must recognize that machines can only assist human functions such as inspection and analysis, not replace the humans who perform the function. Customs clearance will remain a labor intensive task.

AAEI members also give the Customs Service high marks for its work with the trade community in the implementation of the Harbor Maintenance Fee legislation. It is just such an example of cooperation that should be followed consistently by Customs. In 1986 Congress imposed an .04% ad valorem fee on exports and imports to fund harbor dredging and maintenance. Customs held two public meetings to explain the legislation and to receive comments on the interim regulations. Further, Customs has solicited the input of AAEI's members on a regular basis with respect to changes in the HMF forms and procedures.

Another model of how the Service should operate at all times is its Harmonized System education and training programs. Customs gave presentations across the country explaining to importers and exporters the fundamentals of the HS and its proposed implementation. Customs' attitude of 'We're all in this together, so let's make it work', preceeding the anticipated effective date for the H.S. of 1/1/88, should be used to describe Customs' relations with the trade community everyday.

U.S. BUSINESS' PROBLEMS WITH THE CUSTOMS SERVICE

As highlighted above, AAEI members have high regard for certain Customs initiatives. However, importers and exporters have many problems, both general and specific, with the operation of the Customs Service. In recent years, members' complaints about the Service to AAEI have increased dramatically. The complaints range from the overall attitude of Customs personnel to Customs technical interpretations of laws and regulations to procedures which defy logic. Our members have asked us to highlight for the subcommittee the serious problems they face in dealing with the U.S. Customs Service.

'IMPORTERS ARE CROOKS'

Customs is charged with the enforcement of U.S. laws, including the laws of 40 other government agencies. Drug enforcement is a major part of Customs' mandate but trade facilitation is also the Service's responsibility. The members of AAEI are honest U.S. businesses. They have as much a state in drug enforcement as anyone else. Likewise, AAEI members have a great stake in commercial enforcement, as dishonest importers cause their law-abiding competitors as many problems as they cause Customs.

Unfortunately the prevalent attitude of the U.S. Customs Service, from H.Q. to the field, is to assume importers are guilty until proven innocent. Customs is treating honest U.S. businessmen, who sometimes make honest mistakes the same as drug smugglers. The inflexible "enforcement above all else" attitude has lead to an unhealthy fear of Customs by the honest businesses. This fear can best be highlighted by the experiences of this Subcommittee's investigators and our Association. Time after time, as our members contacted AAEI to complain about Customs, especially in advance of this hearing, they emphatically requested that their names not be used for fear of retaliation by Customs in the form of seizures or increased inspections resulting in delays and greatly increased costs.

Some will say that Customs' enforcement policy procedures must be working well if businesses are afraid of "getting caught". To the contrary, Customs' attitude is causing the honest importers to be afraid of cooperating with Customs. This result harms Customs and U.S. business as more resources are expended on both sides, as lawyers are brought in and paperwork mounts, to resolve trivial problems that previously could have been cleared up over the telephone.

This "Us versus Them" attitude now pervades the U.S. Customs Service. Members have been commenting to AAEI for years that the morale of the Customs field personnel is terrible. In the last eight years, many of the most experienced and talented people in U.S. Customs, many of them career personnel, have quit or been demoralized. What has slowly filled the vacuum are inexperienced people, unversed in classification and valuation of merchandise with little encouragement from upper management to become experts in their product or the importers' business practices. AAEI has heard repeatedly that merit raises for Customs personnel are based on that person's enforcement statistics regardless of whether reported cases have merit or ultimately result in penalties. Whether or not this is strictly the case, it is very clear that career advancement comes from enforcement emphasis rather than trade facilitation.

Particularly troubling is the fact that importers are forced to fund Customs' overemphasis on enforcement. The merchandise processing fee (MPF) was intended to cover the cost of and raise the level of service of commercial operations -- that has not happened. Although the appropriation for commercial operations finally has been increased to match the amount in the MPF fund, the money collected through the MPF sits in the general treasury and has not been used as intended. Customs therefore is allowed to use the appropriation money as it sees fit, which has been translated into increased enforcement, not trade faciliation.

Another example of how Customs' negative attitude toward the trade community works against it is the Service's refusal to answer crucial questions about a shipment, a pending liquidation or a pending case. Frequently, our members are told that they may face a penalty due to the Customs lab report on the merchandise. When they ask to see a copy of the lab report or merely ask what was contained in the report, they are frequently refused or told to file a Freedom Of Information Act request which is often denied or not answered for weeks. How can Customs expect importers to avoid future "violations" or clear up misunderstandings when importers are denied access to the relevant information?

Customs pervasive "get tough" attitude is only one of the stumbling blocks preventing an improvement in its commercial operations. Following are other major problems confronting AAEI members in their dealings with the U.S. Customs Service:

INADEQUATE STAFFING

Despite the personnel increase mandated by Congress last year, AAEI members from across the country consistently complain about the inadequate numbers of Customs personnel to do the job with which they are charged. The shortfall in Customs staffing is evident in the field and Customs Headquarters and pertains not only to management level but also to support and clerical staff.

Across the country, Customs does not have enough staff to answer the phones, or do the necessary typing/word processing. U.S. business must abide by Customs rules and regulations, but frequently cannot get through to ask a question or clarify a procedure. Similarly, many of our members have had to wait days or weeks to obtain a notification of action or lab report "which is in typing" while their merchandise sits on the dock and the expense builds up.

Although the number of inspectors and import specialists have increased recently, more are needed to process merchandise quickly and efficiently. Headquarters continues to trim its staff in the Office of Rulings and Regulations despite a rising number of ruling requests in anticipation of the implementation of the Harmonized Coding and Commodity Description system in January 1989. And due to Customs misguided commercial seizure policy, the Fines, Penalties & Forfeitures branch is overworked and simply cannot keep up with the paperwork. The FP&F branch also has responsibility to process Customs' seizures under the "Zero Tolerance" program of drug enforcement. As the House Merchant Marine & Fisheries Subcommittee on Coast Guard and Navigation heard on May 26, the backlog created by poorly thought out program is enormous.

Compounding the lack of staffing is Customs policy of rotating staff at all levels. While it may be a good idea to expose Customs personnel to different areas of operation, the policy should be implemented with logic and a clear understanding of its impact on the business community. Customs efficiency and business certainty are undercut when a Custom employee is shifted through three or four positions a year.

The United States Customs Service appears to have no concept of the private sector where promptness is an essential element of any successful operation. The two and three year delays which go unquestioned within Customs inspire astonishment and, increasingly, contempt from foreign business people who cannot understand American tolerance of such a gross inability to perform routine tasks. Customs and its delays are frequently the first acquaintance foreign companies have with the U.S. government.

An example of how inadequate Customs staffing impacts directly on U.S. business is in the area of trademark. A U.S. company can record its trademark with Customs in order to prevent infringing merchandise from entering the U.S. If the trademark is not recorded with Customs, the field personnel will not detain or seize the infringing merchandise from entering. It is the experience of our members that a trademark recordation has taken up to three months to reach the field. That allows infringing goods three months of market access after they should be denied entry.

Perhaps a better example is found in the ports. The sections that handle importers' protests of classification are incredibly backed-up, especially in Los Angeles and San Francisco. Customs personnel are working hard but just cannot keep up. There is a delay of 8-10 months before the protest is processed to the import specialist level. If the importer has requested review of the protest by the National Import Specialist and Headquarters it most likely means that a decision on the protest will not be available for one and a half to two years from time of protest.

The solution to the staffing problem is relatively simple -- Hire more people for commercial operations and allow them to gain experience in their jobs before they are moved. Customs has informed AAEI, however, that their recruitment is down because of low salaries paid in high-cost areas. AAEI sympathizes with Customs and asks that the recruiting problem be reviewed, especially in the light of the fact that Customs, especially the commercial operations side, is a revenue producing agency, which collected over $16 billion dollars in FY1987. An increase in staffing will only increase the revenue. AAEI importers pay the lion's share, through duties and user fees, of the expense of the operations both as importers and taxpayers -- they are entitled to a major improvement in service.

CUSTOMS SEIZURE POLICY UNDER 19 USC§1595(a)(c)

The controversy over Customs recent seizure initiative by now is well known. With little explanation or proof as to why new seizure authority is needed, Customs is "shooting first and asking questions later," ignoring due process and harassing honest U.S. businesses. When asked why Customs needed to use this new seizure authority, Commissioner von Raab replied, "Because it's easier." AAEI agrees that it is easier to seize rather than detain goods but that does not make it acceptable. It is easier to seize, forcing the owner of the goods to pay Customs for their release, thus building up the Service's seizure and penalty collection statistics, rather than listening to an explanation as to why the goods may or may not be in compliance with the Customs laws. It is easier for Customs simply to declare that an importer is guilty of a violation rather than go through the procedures provided in section 1592.

Mr. Chairman, members of the Subcommittee, a wide spectrum of AAEI members, honest U.S. businessmen and women are being deprived of procedural safeguards extended to others.

Customs does not need the seizure authority provided in 19USC§1595a(c). Section 592 of the Tariff Act of 1930 gives Customs the ability to seize commercial goods under certain express circumstances. Sections 584 and 602 et seq. of the Tariff Act of 1930 describe when and how Customs can seize and forfeit merchandise. However, since 1978, when Congress added certain procedural safeguards to section 1592, Customs has attempted to override those safeguards through legislation or changes in regulations.

The months preceding passage of the Anti-Drug Abuse Act of 1986 were no different. Congress asked Customs to submit a list of authority or changes needed to existing laws to better enable Customs to fight drug smuggling. Customs saw its opportunity to circumvent §1592 by adding language to section 1595a which would allow them to seize any merchandise attempted to be imported which was "prohibited or restricted". The trade community expressed its concerns to Congress that since some commercial merchandise is restricted (quota merchandise such as cheese, steel, textiles and apparel) it should be made clear that the provision was to apply only to narcotics and narcotic-related goods, and was given a reasonable assurance that was how it was to be. The word "restricted" was dropped, but the committee writing the report language in September 1986 also replaced "prohibited" with "contrary to law" and asked Customs to write the report language for the new subsection c. Customs added that the new authority could be used for commercial merchandise such as "coffee and autobmobiles". Subsequently, when the bill was debated on the House and Senate floors in October 1986, the trade community was successful, or so we thought, in clarifying the definition of " contrary to law" as described in this colloquy between Speaker Wright and Congressman Ron Wyden:

> Mr. WYDEN: As I read this legislation, legitimate goods, which are controlled by quotas or other legal restrictions could be included in this definition.
>
> As I understand it, Mr. Leader, it would not be your intent to include these kinds of legal and legitimate goods in the restrictions under this bill.
>
> Mr. WRIGHT: If the gentleman will yield, it emphatically is not the intent of the authors of this legislation to include that kind of merchandise under the terms of the bill. The focus of this is to attack the importers of illegal substances, not legitimate importers. The intent was not to include legal merchandise under the definition of controlled substances. The intent of this legislation is to control the importation and trafficking of illegal drugs into this country and within this country. That is its purpose. That is what the bill deals with.
>
> Mr. WYDEN: One other question, if I might, just very briefly, what would be your view with respect to customs practices as well, Mr. Leader, that the customs law with respect to legitimate goods would not be changed as well?
>
> Mr. WRIGHT: That clearly is the intent of this legislation. You have pointed out a problem that was never intended by the drafters of this bill. Search and seizure authority should be narrowly drawn and it is certainly not the intent of the sponsors that imports of legitimate goods who might technically violate some customs law through simple negligence should be treated on a par with the importers of illegal drugs.
>
> 132 CONG. REC. H9458,9459 (daily ed. Oct. 8, 1986).

Customs has ignored the intent of Congress by using §1595a(c) to seize and forfeit commercial, non-narcotic or narcotic-related, non-prohibited goods.

The problem is not only in Customs' interpretation of the seizure authority, but also in its implementation. Customs is using §1595a(c) when section 1592 can and should be used, contrary to the express language of the statute itself. For example, marking of merchandise has always been considered subject to §1592 procedures and penalties. Customs own guidelines instruct its personnel to use §1595a(c) to seize mismarked merchandise, even though there may be a violation of §1592.

What is more troubling is when Customs changes its marking guidelines without informing the trade community. AAEI understands that Customs issued an internal memorandum around May 4 establishing new marking guidelines. No one has been able to obtain a copy. How is an importer to know whether or not the goods still qualify as properly marked and whether or not a seizure will result?

The administrative delays and confusion caused by Customs use of the seizure authority remains, despite revised guidelines on its use. Although Customs seizes an importer's goods immediately, the notification to the importer of the seizure has taken as long as two months and a final resolution of the case, a year. Customs just does not have the staff to administer its misguided policy.

In most instances when Customs has seized commercial goods, a simple detention or refusal to admit or release would have accomplished Customs purpose. The difference is that to impose a penalty, Customs would have to follow the prepenalty and penalty notice procedures designed by the Congress for section 1592. With a seizure Customs can evade such "burdens" of administrative procedure.

AAEI members have discussed their problems with Customs but have been told that seizures under §1595a(c) of commercial, non-prohibited, non-narcotic related merchandise will continue. Therefore, AAEI members have decided to seek legislation to prevent Customs abuses under §1595a(c) and provide minimum due process protection for importers.

INCREASED IMPORTER COSTS

An importer is not given a choice of whether to comply with Customs rules and regulations. To import goods into the U.S. one must follow certain procedures and one must incur certain costs. AAEI members have no complaints about the regular costs of Customs clearance. However in the past few years, Customs has initiated new programs, usually without much input from the trade community, which initially caused horrendous delays in clearing goods and unwarranted, additional costs. An illustrative example is the Centralized Examination Station program.

Customs has mandated that in each port, importers whose goods have been selected for inspection must move those goods to one of a few inspection sites. Customs has engaged independent contractors to operate the examination stations. The logistical problems when the CES first opened were incredible. Importers suffered delays of one to two weeks and incurred thousands of dollars in demurrage and devanning charges. The inordinate delays have been eased in most locations, but undue costs still persist since the importer must pay to transport his merchandise to and from the CES facility and pay a charge to the CES operator for the "privilege" of using the facilities. AAEI members have asked why the cost of the Customs-mandated service can not be paid by Customs out of the merchandise processing fee collected to fund commercial operations. Customs illogical answer is that although it mandated the CES program and contracted for the operator, it is not the operator of the CES and it does not control the costs.

Another Customs initiative which may impose extraordinary costs on importers is the Trade Inspector program to be established in the N.Y. Seaport on July 1. Contrary to other programs, Customs is discussing how best to implement the T.I. program with importers and customsbrokers However, the guidelines issued by the N.Y. Region call for 100% devanning when a shipment is selected for inspection. This will result in an extra cost of hundreds of dollars per container to the importer, not including a possible demurrage charge. Importers pay duties and a user fee, it is not too much to ask that the costs of all Customs mandated programs be paid by Customs.

CUSTOMS ATTEMPTS TO CIRCUMVENT LEGISLATION

Another manifestation of Customs' disregard for Congress and the trade community are the Service's attempts to issue rules and regulations which are inconsistent with either statutes or well-established practice and procedure.

Customs published a Notice of Proposed Rulemaking in December 1986 which would have changed the definition of Customs fraud to eliminate the requirement of "intent to defraud" in §592. The requirement of intent as found in the Customs regulations is a prime component of the three degrees of culpability found in section 592 of the Tariff Act of 1930, as carefully amended by the Congress in the Customs Procedural Reform Act of 1978. Although Customs received over sixty written comments opposing the unjustified change, the NPRM still has not been withdrawn.

In the fall of 1987, Customs published a NPRM which would have charged importers with Customs violations if the importer after any sort of inadequately defined "written notifications", entered the goods under a classification different than Customs "suggested". U.S. law specifically mandates that it is Customs duty to ascertain the proper classification. It has long been settled that an entry summary cannot be false as long as the merchandise is accurately and completely described on the invoice and entry summary. Customs is once again attempting to increase its enforcement authority by shifting its statutory burden on to the importers. Of further concern is the Commissioner's comment at AAEI's Annual Meeting in May that there is a proposal under consideration within Customs to seek legislation to place the burden on the importer to classify goods. AAEI sees a major confrontation emerging with such a proposal. If Customs retains the final word on the accuracy of a classification and penalty powers, the importers will be in the ultimate "no-win" situation.

CUSTOMS LACK OF UNIFORMITY

Despite Customs overemphasis on enforcement to the detriment of its commercial operations, it recently has been attempting to render the entry process more efficient. One of the most consistent complaints of our members is the lack of uniformity from port to port. An importer will have a shipment inspected in one port and released, where the same goods will be held in another.

Customs is attempting to increase its uniformity through such programs as pre-classification where Customs and the importer agree to enter the goods under a certain TSUS number. AAEI endorses the concept of Customs officials consulting with the importer to avoid problems at a later date. However, AAEI members are troubled by the declaration by Customs that although the pre-classification advice will be binding on the importer, it will not be binding on Customs. This again unfairly shifts Customs statutory burden of classification to the importers and will not increase uniformity if Customs does not have to follow its own advice. Only increased staffing to better disseminate information and more training will increase Customs uniformity.

LACK OF NOTICE TO THE TRADE COMMUNITY

AAEI members frequently find themselves surprised by the implementation of a new Customs policy or procedure simply because Customs did not consult beforehand with the trade community. The record shows that lack of consultation and business input has caused Customs to delay implementation dates and eventually amend the policies to reflect the legitimate concerns of the business community.

In the fall of 1986, the Service informed AAEI that in its opinion the statutory authority to continue duty suspensions for certain items entered under Schedule 9 of the Tariff Schedules of the U.S. had expired. AAEI understood Customs position and asked that Customs inform the trade community before it began collecting duty on Schedule 9 items. On December 31, 1986, New Year's Eve, without prior notice, Customs issued a telex at 10:20 p.m. informing the regions that as of 12:01 a.m., January 1, 1987 duties were to be collected on many articles entered under Schedule 9. AAEI realizes that December 1986 was a busy month for Customs. Nevertheless, there is no excuse for Customs shoddy treatment of the trade community and untimely notice to its own personnel.

A more recent example underscores Customs' disregard of U.S. business. Since Customs is charged with the calculation of the textile and apparel quota levels, it publishes a weekly quota report on which many importers rely on. This January, AAEI asked Customs when the first quota report of 1988 was being issued. At that time AAEI was told that there were some "computer problems" which had delayed the report. A week later AAEI was told that Customs decided in December 1987 not to make the report available. Customs claimed they did not have the staff to publish the written report and had since the information was available on a limited basis to brokers, 'it was no big deal'. After the predictable outcry by AAEI members, Customs reversed its decision and is now publishing the written information again, albeit four days later than it used to. AAEI members understand the pressures on Customs staffing, but they should not have been penalized by Customs unilateral discontinuance of what is for many the sole source of information for a government-mandated program. Again, it is an example of U.S. Customs not understanding or disregarding the needs of business.

LACK OF PUBLISHED RULINGS

AAEI and its members wish to emphasize their concern over Customs' seeming attitude that they have no obligation, or that it is inefficient, to provide information voluntarily to the people who are required to deal with the Service. A prime example is found in the Customs ruling process. Customs encourages importers use of the ruling process to provide certainty in questions of merchandise classification and valuation. Rulings are published to inform the trade community of Customs interpretation of classification, valuation or procedural questions. Although Customs continues to "publish" rulings, publications increasingly are made more difficult to access. In 1987, only 22 Customs Service Decisions were published in the Customs Bulletin. In 1979 that number stood at 475. Some decisions are still published on microfiche, but at fewer are published at a late date. Customs has stated that rulings will be soon available on Lexis, a legal computer search system, but that system is even more costly than microfiche.

Another problem with Customs rulings is the turnaround time. AAEI members have reported that while noncontroversial ruling requests in New York are answered within 2-3 months, 6-9 months is the norm when the request involves questions of law or fact with any real substance. Increasingly, there are delays of 1-2 years and more, most likely due to the cutbacks in the Office of Regulations & Rulings. As discussed above, it can be two years before a protest with a request for further review ever reaches New York or Washington.

Of special concern is the current interruption of rulings issued in the classification nomenclature of the Harmonized System. Customs announced last summer that beginning 9/1/87, ruling requests would be answered using both the TSUS and HS nomenclature, in anticipation of the HS becoming effective. Customs began a monthly subscription service, making available a month's worth of HS rulings. For some unknown reason, Customs has not published the monthly HS service since the beginning of this year. This failure, combined with the inordinate delay in the ruling request turnaround time, not only deprives the trade community of the information it is entitled to, but will create even more work for Customs beginning January 1, 1989 as the U.S.-Canada Free Trade Agreement, certain GSP changes and hopefully, the Harmonized System all take effect at once. Further, Customs continues to call its HS rulings non-binding with no proposed procedure to convert them into binding rulings.

CONCLUSION

Mr. Chairman, members of the subcommittee, the members of AAEI urge you to exercise your authority to remedy Customs' lack of responsiveness to legitimate importers concerns and needs. Although initiatives from the McKinsey Report and certain Day-One programs may improve Customs efficiency, equal access to the programs and Customs information must be maintained for importers and brokers, especially the smaller ones.

AAEI members uniformly believe that Customs' overemphasis on enforcement has negatively affected its commercial operations and honest U.S. business. As the problems detailed earlier evidence, the trade community is paying more for less -- less information, less staffing and less service. Customs has not hesitated to change, with inadequate notice or with no notice at all, long-established practice and procedures. AAEI requests that Congress restate to Customs that Customs has a mandate to facilitate trade and is not to impede all legitimate trade. Focused enforcement efforts benefit everyone, especially AAEI members -- honest U.S. importers and exporters. "Enforcement at all costs" however, encumbers real enforcement and vitiates cooperation between the trade community and Customs.

The membership of AAEI stands ready to work with this subcommittee, the Ways & Means Committee and the U.S. Customs Service to improve Customs commercial operations and restore the relationship between Customs and the community it serves. Thank you for the opportunity to present our views today.

Chairman **Pickle**. We thank you, Mr. Pellegrini.

Mr. Frenzel, would you like to lead off in questions?

Mr. **Frenzel**. I'd like to ask each member of the panel, is there building up within the Customs Service as a result of the heavy emphasis on the enforcement rather than on normal commercial activities, a sort of us versus them adversarial attitude?

Ms. **O'Dell**. Well, if I can address that question first.

There's always been, to a certain extent, a problem with that in terms of the inspectors because they are on the front line encountering the public and in encountering merchandise every day.

The thing that I've seen happen over the last several years is that this attitude is going beyond the inspectors.

The import specialists—who when I was an import specialist were responsible for communicating with the importers, and we were advised that it was part of our responsibility to expedite the commerce and to make the information available to the importers, and to work with them to help them achieve compliance with their import shipments—are no longer rewarded or encouraged to perform that kind of activity.

Instead, they are also evaluated on the basis of seizures and enforcement activities and fraud cases that they are able to detect perpetrated by this apparently huge community of illegal importers that we have out here.

And, naturally, after a certain period of time, when that's what they're being rewarded for, and they're not receiving any incentive at all to behave in any other fashion, it becomes part of their ingrained behavior. When it becomes part of their ingrained behavior, it becomes very difficult for the importers to see import specialists as anything other than the enemy and for the Customs Service to see themselves in any other role.

Mr. **Frenzel**. What do you mean—you said something about a basis for reward?

Do you mean you get promoted?

Ms. **O'Dell**. That is one of the criteria which is used by the Customs Service in evaluating its employees.

For the inspectors, as we understand, this is one of the primary objective considerations that they take into account in determining whether or not they are eligible for promotion.

With import specialists, it's less clear. However, they are given financial awards and get special commendations on the basis of the enforcement activities that they initiate.

Mr. **Frenzel**. I see. But no credit at all for moving shipments along smoothly and merely collecting the required duty?

Ms. **O'Dell**. If they do, it's concealed from the public and from others within the Service very effectively.

Mr. **Frenzel**. That is a dangerous incentive system, isn't it? That is like telling a policeman that he has to issue so many tickets to get promoted and, meanwhile, never mind who's getting killed or who's helping little kids across the street, or whatever.

Ms. **O'Dell**. We feel that it's particularly dangerous because, in the process of doing this, Customs has been taking resources away from the import specialist side, those who help the importers bring their merchandise into compliance. Customs may have been loading the resources, those that they have, onto the side that is responsible for detecting problems when the merchandise actually arrives here.

Because there isn't adequate help in getting information necessary to bring the goods into compliance, you have a level of problems occurring with imported merchandise that reinforces the perception on the part of the inspectors and the auditors and those who are in what John called the gotcha role, that they need more of themselves in order to detect all of these problems. Fewer import specialists are, as a result, available to deal with these problems on the front end. It's a revolving door, and it just keeps going.

Mr. FRENZEL. Now, Mr. Chairman, as I recall, when we reviewed the Customs law in 1978, one of our guiding features was that we wanted Customs and the import community to work together. We wanted it to be a cooperate, conciliatory process under which Customs could collect its fees as swiftly and with as little cost and wasted motion as necessary. And a system under which the importing community could get its job done and maximize its profits so it could give us our share sooner.

But, apparently, we're drifting away from that. I believe it is important that we investigate with the Customs Service managers exactly what their policy for promotion and increased pay is with respect to enforcement versus the speedy and efficient discharge of their normal commercial duties.

I thank the panel. I know they've been here a long time.

Chairman PICKLE. Well, let me ask the panel. Each of you have relayed to us that it costs you money in sales and delays in processing these goods.

Why can't you—is it too simple to ask you why you can't just send your goods a day or two earlier? Why do you have to operate on a 24 or 48-hour basis? It's a little difficult for me to understand why 24 or 48 hours is that important. Why can't you send it 24 hours ahead of time?

Mr. PELLEGRINI. In the first place, if I can tackle this one first, I don't think we're talking about 24 or 48 hours.

Chairman PICKLE. A day and a half is what they say.

Mr. PELLEGRINI. Most importers will build in 3 or 4 days, 5 days for Customs clearance, depending on the port of entry. They've got that experience.

The delays I was referring to were delays which are caused by seizure and detentions, seizures more than dententions, when Customs simply doesn't have the resources to investigate the purpose of the seizure and then follow through, get the information they think is appropriate.

Just to give you a simple example. An importer client brought in some sporting goods, and the country of origin on the sporting goods was X, the invoice said Y. There was a typographical error in the invoice. All right. The sporting goods were properly marked as to country of origin.

Well, a few years ago, that would have elicited a phone call from the inspector or the import specialist because this importer had a very good record, and said, look, what's the story here, straighten it out, and we'll release the goods.

It didn't happen this time. They seized it immediately. The first time the importer knew there was a problem was a call from the broker who said they're seizing the goods. A week or 10 days later, there was a seizure notice. So we've already lost 10 days in the seizure notice.

Now, we responded to that within a couple of days, all right, by writing a letter to the Fines and Penalties Officer which, in that case, happened to be several hundred miles away. It took them a good 2 months to respond to that, despite phone calls frequently, at least once a week. We were able to get the goods released upon the payment of security within about 2 weeks after we had submitted our response to the seizures notice, and eventually, 3 months later, they agreed that we were right, and they returned the security. That's the kind of delays I'm talking about.

In addition to the delays, we have to pay for that additional storage.

Chairman PICKLE. I suppose I ought to ask that of Mr. Langlois, I believe you're the one who made the statement.

Mr. PELLEGRINI. Yes, sir.

Chairman PICKLE. I don't want to dwell on this, except it seems to me that part of the answer could be found in shipping it earlier?

Mr. LANGLOIS. Well, the point is, Mr. Chairman, we're already forecasting 9 to 12 months in advance, and we're planning that much time in advance.

We're considering, as John said, at least 5 days to clear Customs. I guess I would turn it around, why should we have to? It seems to me that we're bending over backward to allow enough lead time to get the merchandise in, to allow enough lead time to clear Customs. Why should we have to give up our competitive advantage when these delays to us seem unnecessary. Why should we give the Customs Service 2 more days and risk missing another delivery deadline and being burdened with additional costs?

Chairman PICKLE. Well, I'm not passing judgment whether you should or you shouldn't. And I think your point is well made. This could cost any importer or exporter, either way, a lot of money, if it was an unusual delay.

And mainly the reason for asking it is necessary, is it important that it would have been so delayed?

Now, it's kind of a concern to me. Each of you are in the textile business, and you're complaining about the slow processing and requirements, and Mr. Pellegrini listed, I believe, at least 6 or 7 areas where there's a real weakness in the Customs Service.

I notice you pointed out that you're not critical of Customs in your district but, as a whole, you make the observation. You're protecting your flank a little back home, and I can understand that. But, nevertheless, you make these observations.

Now, earlier today, the inspectors who testified, were in effect saying the same thing. So it seemed to me like we do have a problem here worthy of further review and investigation. If the inspectors are saying we do not have training, we do not have equipment, we do not have judgment, then goods are coming in under fraudulent claims? We have to almost lie to keep our jobs. And you in turn are saying that it's slow and the process is good.

I think we've got to say that we do have a problem here and we've got to try to figure out how to handle it. This committee is not trying to pass judgment on that at this point because, at best, the Customs people have a very, very difficult job. And none of us are wise enough to know exactly how this ought to be handled. But I rather suspect we can do a better job than we have.

Now, we've gotten your testimony, and we're glad to have it and we'll put all of it in the record.

Let me ask you a kind of a hypothetical case.

If any of you witnesses out of this panel, if you were the Customs Commissioner, and if you had just been put on the job, what would you do in your first month on the job? If you had the right to do something in order to change it, and we pretty much let Customs do whatever they want, then if you were Commissioner, what would you do the first month on the job, Mr. Langlois?

Mr. LANGLOIS. Mr. Chairman, I think the first thing I'd do would be to look through those enforcement roles that we currently have and try to eliminate those that do in fact seem to be unnecessary burdens on commerce.

Chairman PICKLE. That's the rules and regs?

Mr. LANGLOIS. Rules, regs, policies and so forth.

And I think in a general sense, the second thing I would do would be to communicate those remaining rules to the import public clearly so that they know what the rules of the game are. Because I think if we knew more about how Customs was going to approach these problems, we could avoid a lot of these delays as well.

Chairman PICKLE. Mr. Pellegrini.

Mr. PELLEGRINI. Well, I think what I'd do is get on a plane and go to every district and say, as the Commissioner, and talk to district directors and import specialists, and say—particularly to import specialists and inspectors on the line, that they're the most important people in the Service and it's their expertise and their knowledge which helps the Service do its job. And tell them that if you're in the apparel line or the steel line, or whatever line, that they're likely to be in that line for a while so they can build up the expertise they've lost over the last few years because of continually shifting people from one job to another.

There was a time when an import specialist in a particular line was an absolute expert in that line, knew more about the industry, knew more about the foreign countries where the merchandise came from than most people in the business. They've lost a great deal of that expertise, and that certainly affects their enforcement role.

I think to build up the morale of inspectors and import specialists, to tell them that they are not going to be replaced by computers, that we needed their expertise is probably one of the most important things——

Chairman PICKLE. Mr. Pellegrini, I don't want to interrupt you, but I've lost you.

You're saying we ought to keep more personnel, more trained personnel?

Mr. PELLEGRINI. More trained personnel, and do something to get the morale of those persons up, particularly import specialists, and inspectors who, in our view, are the backbone of the Service.

Chairman PICKLE. Are you saying then that we have a shortage of personnel and that the morale is low?

Mr. PELLEGRINI. That's correct.

Chairman PICKLE. All right.

Ms. O'Dell.

Ms. O'DELL. I agree with Mr. Pellegrini about visiting the individual districts and talking to the import specialists and to the inspectors in the district to find out, first, how they perceive their job; second, what resources they feel they need to do their job better.

One of the things that I've observed over the years is that there is also conflict between the inspectors and the import specialists as to who has responsibility for which areas.

The next thing that I would do is issue clear directions to the different groups as to who has which responsibilities. I heard a group of inspectors here a little while ago saying that it's hard for them to classify merchandise. Well, in my understanding, it's the import specialist's responsibility to classify merchandise. It's the inspector's responsibility to determine if the invoice description is correct.

But if the inspectors are trying to classify, perhaps they are not able to devote enough of their time to the type of work that they're supposed to be doing. Find out what tasks both groups regard as being important to the execution of their responsibilities, and find out what changes can be done organizationally without adding resources to make sure that these problems are being addressed on the front end rather than after the shipments arrive.

Chairman PICKLE. Well, those suggestions are helpful. I think you ought to, perhaps as a group, meeting in a textile area, would ask yourselves what you could do to improve your own processing in conjunction with the Customs people.

Mr. Frenzel may be right that we apparently have put more emphasis on enforcement than we have in processing of goods. And we're not trying to offset that balance. We are just trying to understand it a little bit more clearly.

I'm going to ask that you submit to the committee any suggestions you have for improvement. I've asked you the broad question, what would you do if you were Commissioner, and you said I'd get better people and keep them on and keep everybody happy and train them better, and that sounds good.

But if you have other suggestions, we'd like to have them, and we appreciate if you'll give that to us here in the immediate weeks ahead.

Well, I thank the panel. We've got another panel to go, and I know this has been a long day. But this has been very helpful to us so I appreciate it.

Ms. O'DELL. Thank you, Mr. Chairman.

Chairman PICKLE. The Chair will ask the next panel, consisting of Mr. Sandler, Mr. Rowan, the National Customs Brokers represented by Mr. Wegener, and Mr. Soller if you'll come forward.

The committee will be in recess for just a minute.

[Short recess.]

Mr. FRENZEL. Gentlemen, let's begin in the order in which you are listed on the witness list.

Mr. Sandler, will you begin, please.

STATEMENT OF GILBERT LEE SANDLER, ESQ., SANDLER & TRAVIS, P.A.

Mr. **Sandler**. Thank you.

My name is Lee Sandler. I'm an attorney from Miami, Fla. I've specialized in handling customs problems since 1969.

I filed a statement with five key points, and I'll address those briefly. Those points are very specific items arising out of specific situations which we've seen in the course of our practice.

And before I address those, I would like to comment on the more general themes and issues that the committee has addressed and heard today.

While my paper does not dwell on it, I agree that the biggest problem that we face with the Customs Service at this stage is its emphasis on enforcement to the detriment to the commercial service. Probably the most dramatic problem that we see with the Customs Service is the resurrection of its seizure and detention authority as the state of its art in connection with enforcement activities. This has had such a chilling and damaging effect upon commerce, that these things are really very important for this committee to focus upon. I don't mean to detract from that emphasis with the issues that I've chosen to address very specifically here.

The more subtle problem in connection with the commercial service is the feeling within the Customs Service that computerization is some sort of a substitute for handling the commercial side of its obligations to the importing public and to the U.S. consumers.

It's extremely important that we don't focus upon that to the detriment of the intelligent, well-managed system that we need to make our international trade environment work and our commerce as a whole work.

The specific areas that I've addressed are examples that fall into the same patterns of the major themes addressed by others. They might be examples that are slightly different than some of those which the committee has heard during the course of the testimony today.

The first point has to do with the absence of the numbers of import specialists and protest review officers, and the absence of experienced officials in those places, to make the administrative protest process work as it ought to.

In my statement, I've focused upon one issue which is truly a legislative issue that could be addressed by this committee.

In 1970, the Congress amended section 514 of the Tariff Act to require that the Customs Service act within 2 years on a protest. While it went that far, it didn't go beyond that and say what would happen in the event that nothing happened in the 2-year period. In our experience, very often nothing happens in that 2-year period. Customs continues to hold the protest pending. At the time it finally gets to the protest, it may make a decision in favor of it, it may grant it, or it may deny it.

It is neither deemed approved nor is it deemed denied at the expiration of the 2-year period stated in the statute, it's just pending. To the extent that an importer gets a protest granted after the 2-year period, it is certainly not going to say that the Customs Service has acted illegally.

However, in our experience we see a problem for importers. I've cited two examples in my statement, one a very complex protest and one a very simple protest, each of which were pending in the Customs Service for 6 years. In the first one, at the end of 6 years, only 75 out of 555 entries have been decided. Three years after the protest was filed, Customs Service headquarters said the protests should be granted; 3 years after Customs Service headquarters said that they should be granted, the port had failed to make decisions on probably 75 percent of those entries. They're still pending after a 6-year period.

The other case, involved just a couple of entries, not a complex problem. Customs, after 6 years, decided to deny the protest because it couldn't find its file and it couldn't find the time to go and ask the importer to reconstruct it. In fact, Customs asked that the entry file be reconstructed after they denied the protest.

There's a danger in saying that a protest ought to be deemed approved if Customs doesn't act in 2 years, because that's an invitation for someone to say we'll simply deny the protest.

And so my suggestion is that there also be evidence of some thoughtful deliberation on it, a decision which complies with the statutory mandate that there be a reason given for the action that is taken.

It's got to be a rare case, where the Customs Service would truly need more than 2 years to act on a protest. And it certainly must be a consequence of not having the staffing or the expertise to really handle the issues that are pending at the Customs Service. And that's certainly the case with the 6-year protest that we still have pending.

The second area I addressed in the statement involves the liquidated damage authority of the Customs Service. That's a very strong club that the Customs Service can wield. It asks for the full amount of liquidated damages—the forfeiture value of merchandise—for default on any of a broad range of violations. Some violations could be very technical, the simple late filing of an entry, or could be very substantial, the introduction of very harmful contaminated foodstuffs into the United States. The same type of redelivery notice might issue, the same type of liquidated damage notice might issue.

The missing element that we have seen which causes me to bring this procedure to the committee's attention is that far too often the Customs Service neglects to invoke this authority in a prompt and timely manner. The result is that, Customs does not use the liquidated damage authority as a vehicle whereby it can ensure that there is compliance with the law, or it can give notice to an importer, to a broker, or to a surety company that there's a problem that ought to be cured. Customs sits on this authority and doesn't exercise it as aggressively as it ought to.

The example that I cited is an extraordinary one, and I suggest an extraordinary relief for it.

Over an 11-month period, the Customs Service failed to issue a single liquidated damage notice, while a single importer continued to make entry after entry after entry without paying its duty. Some checks were bounced checks, there were occasional late payments, most of them were absolute nonpayments.

The surety company wrote single entry bonds on each one of those transactions. The Customs Service operates under a regulatory obligation to issue an immediate liquidated damage notice for the nonpayment of the estimated duties.

In the absence of that notice, the surety company believes that it is in fact writing new obligations on new entries for an importer that it can trust. In point of fact, that's untrue.

Any one of those notices having been issued would have caused a surety company not to write the next bond, not to incur the next obligation. But it didn't happen. After 15 months of defaults, the Customs Service issued its first batch of liquidated damage notices. By that time, the importer is not around, not importing any more. The Customs Service takes the position that the surety is obligated at a minimum to pay all of the estimated duties that that importer defaulted upon.

That's a problem that would not have existed but for the failure of the Customs Service to have immediately issued a liquidated damage notice. The Customs Service should not be collecting duty nor liquidated damages from a surety in that situation.

The importer may have been deprived of the right to protect itself as well. There are occasions where a broker does not turn over duties to the Customs Service, and the importer may not know that unless the liquidated damage notice issues from the Customs Service to the importer. The importer won't deal with that problem unless it gets that notice from Customs. It's relying upon that notice.

Those are situations that the Customs Service and the courts to this point have not recognized as ones where an importer or a surety can protect itself from malfeasance by the Customs Service. I'm suggesting that this committee has the authority to take some remedial action in that area.

The third item touches directly upon the enforcement activities of the Customs Service, and that is in connection with how it handles information that's supplied to it by confidential informers.

When an importer files an entry, it puts itself on the line with a signed statement that obligates it to have told the truth to the Customs Service or suffer some consequences. And they can be very serious. Those consequences have been the subject matter of much of the testimony here.

The situation with an informant to the Customs Service, at least in the instance that we have cited here, and we think in others as well, is not quite the same. In the aggressive enforcement of the penalty and seizure laws, the Customs Service relies upon information which has not been verified, has not been sworn to, has not been tested by the Customs Service, and is acted upon in a way that can be very detrimental and harmful to an importer.

The example that I've raised is one in which the Customs Service is caught up in what I regard as a complex and difficult task for them and that's to work out how it's going to enforce our trademark laws. I recognize the Customs Service has a great obligation to monitor imports for counterfeit goods, but I also recognize it has a very serious obligation to make sure that legitimate trademarked merchandise flows through our ports efficiently and economically.

One informer, without verification, filed a simple letter with the Customs Service, saying that in excess of 20 named importers who were apparently just parallel market importers engaged in legitimate business, are likely to be counterfeiters. The Customs Service shouldn't be using that as a basis upon which they detain shipments, delay shipments, treat those importers as high risk importers, and cause all the detriments that flow from that.

That's exactly what happened in the example cited in my written statement. And the importer is without recourse to find out who that confidential informant is to take any action for the damages that it suffers as a consequence of those activities. Consequently, it must rely upon the Customs Service to erect a standard system whereby those who supply the information that Customs uses in its enforcement activities and where that information turns out to be baseless, groundless, or given for the wrong intentions, that there are consequences that will flow as a result of the Customs Service's testing of the veracity and the good faith of the informant.

Fourth, Customs should be held more strictly responsible for maintaining the confidentiality of the names and addresses of importers and exporters.

The Congress has twice adopted legislation which keeps the names of importers and exporters and their addresses confidential. It keeps it out of public information systems based upon the simple filing of a certification. That's an automatic procedure.

That procedure has been in force by the Journal of Commerce through a computerized system, whereby when it's given a name, the computer recognizes variations of the spelling of the name. There have been very few examples in which names that should have been given confidential treatment in fact were made public as a result of errors in inputting information into the computer.

Customs, in moving towards its computerized environment, is taking over that system, and it is not adopting the sort of sophisticated computer program that will recognize variations in spellings. In fact, if a name is spelled the proper way, but the spacing is different than the way it was put into the computer originally by the programmer, the computer, I'm told, would not recognize that name and, consequently, the name will not be treated as a confidential name.

Customs has a far greater obligation to protect the confidentiality of those people who ask for it. It is not fair to shift the burden back to the importers to imagine every conceivable spelling, misspelling and spacing of their name that might occur.

The importer is not in a position to predict how those spellings or misspellings will occur in the system because the information that's inputted into the computer and might be made public is information taken upon manifests that are prepared abroad by people who are generally not in the control of the importer. Consequently, Customs, as the person who is taking on the task of putting that information into the systems which will become public, must undertake the obligation of safeguarding it.

Finally, my fifth point was that Customs should be required to give notice to the public of information which changes the admissibility of merchandise into this country.

I've cited two specific examples in my testimony that are quite different examples of circumstances in which that information has not been made public. One is with the registration of a trademark itself.

Under current regulations, the registration of a trademark becomes effective immediately. That registration is not made known to the public. The only way the public is aware of it is if they were to call Customs Service headquarters and ask. It is not published and made available to the public on a routine basis.

There's no lead time given, Where a trademark item has been freely imported and is not restricted, but a new restriction is imposed at Customs Service headquarters, there will be no notice to the public. The new restriction will apply retroactively even though an importer has relied upon the word of the Customs Service that it can be freely imported, that, in fact, it was not restricted at the time the purchase was made.

That type of system shouldn't exist. There should be communication that allows businessmen to purchase goods legitimately, to know whether or not they're buying a restricted item so that they can avoid it. Currently they are not able to do that.

The second is an example that involves both the Food and Drug Administration and the Customs Service, and reflects some of the battles over parallel market importations.

In recent situations, in order to stop goods which can be freely imported into the United States, some materials which are prohibited in the United States and not prohibited outside the United States have apparently been included in products. Whether we're talking about red dye No. 2 or fluorocarbons, materials which are regarded as prohibited by the Customs Service and excluded from the United States are put into those products without any sort of labeling or notice to the public.

Someone will buy an item of that sort and import it. When Customs detects it, it's certainly obligated to prevent its importation into the United States. However, once the Customs Service has information in its possession which would indicate that a particular brand named product is likely to include a prohibited material and is not so labeled on the product itself, it certainly ought to make certain that that information is made known to the public.

Legitimate businessmen should have the sort of information that allows them to make choices to import goods which are legitimate to import, so that they do not run afoul of the law unintentionally and suffer the consequences that we see time and time again—long detentions, long seizure and penalty procedures, the mitigation procedures, penalties being paid, goods being exported, purchased, and losses occurring in situations where there was certainly no intent to enter into a transaction that would in any way be illegal. Had the information been there, the transaction wouldn't have occurred, the importer wouldn't have taken a loss, and the Customs Service wouldn't have had to devote so much attention to that particular importation.

I very much appreciate the opportunity to present these issues to the committee today. As I said in my written statement, I really do feel that the function of an Oversight Committee is an extremely important one in the legislative process. I think oversight is particularly important with the Customs Service which has such a difficult role to balance both the commercial side and the enforcement side.

Some of the testimony today talked about how at the time in 1978 the 592 statute was amended and things looked good. I frankly think that we don't know of any age that was a golden age for the Customs Service. I think the burden it carries is a very substantial and difficult one, and I think the function of oversight is an ongoing one which is probably necessary at any point in time.

The enforcement emphasis right now is so substantial and so critical that this is a time of heightened oversight, but I think it's been historically the most important and effective means for making certain that we do have effective and efficient administration of our trade laws.

Thank you very much .

[The statement of Mr. Sandler follows:]

PREPARED STATEMENT
OF
GILBERT LEE SANDLER, ESQ.
SANDLER & TRAVIS, P.A.

Presented to the Oversight Committee
House Ways & Means Committee
Washington, D.C.

June 9, 1988

I am very pleased to have an opportunity to address this Committee in connection with its very important work reviewing the administration of the customs laws. Congressional oversight of the activities of any federal agency is a most important element of responsible federal legislative action; legislative and administrative problems often are best -- or are only -- understood after examining the experience of the agencies after adoption of legislation. In the specific case of the Customs Service, Congressional oversight is especially necessary because of the extraordinary demands placed upon the Customs Service to balance its law enforcement and commercial service activities, demanding and complex dual roles.

I am a lawyer who has specialized in handling issues arising under the Customs laws for almost twenty years. For the past eleven years I have been a partner in the Miami, Florida-based law firm of Sandler & Travis, P.A., a firm which now also has offices in New York, Washington, D.C. and Los Angeles. Our firm concentrates its services in the field of international trade and transportation regulation, working with a clientele that includes importers, exporters, customshouse brokers, freight forwarders, and the surety companies and underwriters of customs surety bonds. Prior to entering private practice, I served for more than five years as a Department of Justice trial attorney in the Civil Division Customs Section, specializing in defending court cases brought against the Customs Service.

I am certain that the Committee will address the very serious and highly publicized problems faced by legitimate importers as a result of the aggressive enforcement programs of the Customs Service primarily under the Anti-Drug Act. Those problems are particularly pronounced among importers in Miami, where Customs conducts one of its most concerted enforcement efforts, while it also is responsible for some of the most complicated commercial import programs: Miami is a major port for 807, CBI and quota merchandise. However, my presentation today will concentrate on five more routine problems witnessed in our daily practice.

1. Administrative Protests Against Customs Service Decisions Should Be Deemed Approved Unless Decided by Customs Within A Reasonable Period Of Time And With A Demonstration That The Decision Was The Result Of Thoughtful Deliberation.

Most decisions by the Customs Service become final unless a formal protest is filed within ninety days of the decision to be contested. Section 514 of the Tariff Act of 1930. Congress has provided that Customs "shall review" and "shall allow or deny" protests in whole or in part" within two years from the date a protest was filed . . . ." Section 515(a) of the Tariff Act of 1930, as amended. The two-year rule for decision-making was adopted in 1970 (Pub. L. 91-271). The statute is silent as to what happens if Customs fails to act within the two-year period.

It is a rare case that is so complex that Customs should require more than two years to reach a decision. Nonetheless, our experience demonstrates that Customs often takes more than two years to act on protests. Two examples will demonstrate this experience.

In one case still pending before Customs, a series of related importers and their sureties (who were billed over $300,000 in increased duties) are without action on most of their protests after six years. Three years elapsed from the filing of the protests (in 1980-82) to issuance of a decision by Customs Service Headquarters (in January 1985) holding that the protests should be granted by the port of entry. The Headquarters decision was not a decision on the protests, it was merely an instruction to the Customs officials at the port of entry: (it directed that they act favorably on the protests and it set forth the basis upon which to reliquidate the entries. Since issuance of that "decision," three additional years have passed but approximately 75 of the 550 entries involved are still pending at the port as "undecided" protests.

In another case, our firm filed a protest in December, 1981 and received a denial six years later, in December, 1987. The denial could hardly be said to reflect a thoughtful, well-considered deliberation over the six-year period because three months after the denial, Customs sent a letter requesting that we supply it with duplicate documents to reconstruct its file. Customs apparently had lost its files several years earlier, and therefore made its decision without having any documents to review.

Customs should be required to act on all protests within two years, and if they fail to act in a manner demonstrating an intelligent consideration of the protest claim, the protest should be deemed approved by operation of law.

2. Sureties Should Be Relieved Of Obligations To Pay Liquidated Damage Claims Where the Customs Service Has Failed To Promptly And Timely Issue Claims For Liquidated Damages Or Demands On The Surety.

Liquidated damages are assessed by the Customs Service for violations of laws ranging from very technical errors (e.g., filing entry documents one day late) to very serious violations (e.g., failing to redeliver to Customs custody foods which contain filth or contaminants). In at least one instance, the Customs Regulations require Customs to "make an immediate demand for liquidated damages" on both the the importer and the surety. Section 142.15 of the Customs Regulations (19 C.F.R. § 142.15); which involves the untimely filing of entry summary documentation (and presumably non-payment of the estimated duties ordinarily required with that documentation). See also § 172.1 of the Customs Regulations (19 C.F.R. § 172.1(a)).

Experience again demonstrates that the Customs Service often fails to act immediately, causing sureties (if not importers) to incur additional liquidated damage obligations which would not otherwise exist. An example of this occurred in Miami, where a single importer either failed to pay duty, paid duty late or bounced checks for estimated duties on at least 25 separate occasions over an eight-month period (February 1984 to October 1984). On each of those occasions, a surety company wrote a separate and new "single entry bond" securing the government against default on each particular new importation. Despite the fact that new defaults were occurring on almost a weekly basis, Customs did not issue a single liquidated damage notice for more than 15 months following the first default by the importer. On that late date (January 31, 1986) it issued notices of liquidated damages in the amount of $394,021.00, covering only eleven of the entries.

During the eight-month period in which the Customs Service neglected to provide the surety (or importer) with any notice of default, the surety continued to incur new obligations by writing "single entry bonds," i.e., an individual bond issued to secure the obligation on a particular importation. Had the surety known the importer had not paid estimated duties under any of its previous bonds, it certainly would not have written any new bonds, or incurred any new obligations. Similarly, if an importer had notice from Customs that it it had not received an estimated duty payment, an importer who was innocent of error or wrongdoing might also protect itself from additional harm. For example, if it had actually made a payment to its broker and the broker had neglected to turn the payment over to the Customs Service, this importer would make certain that it no longer did business with that broker. In either case, the failure of the Customs Service to comply with its own regulation would lead the importer or surety to incur additional obligations it would have otherwise escaped.

In our example, we believe the importer actually knew of its default, but the surety clearly did not. Customs, nonetheless, required the surety to make full payment of all duties (plus "mitigated" liquidated damages for the "late payment" by the surety of those duties) and accepted no obligation for its actions which led the surety to write new bonds for a principal with whom it would have ceased to do business had it been in possession of the information the Customs Service was required to provide it.

Customs should be required by statute to act in a timely fashion or lose its recovery against the importers or its surety.

3. In Acting Upon The Information Provided By Confidential Informers, the Customs Service Should Require A Higher Degree Of Reliability From Its Informers Prior To Acting, And Should Assess Appropriate Penalties Where An Informer's Actions Were Intentionally Misleading.

The complexity of the Customs Service dual role as an enforcer and facilitator is nowhere more apparent than in its actions with regard to trademarked merchandise. Customs is called upon to detect and eliminate counterfeit goods offered for importation; Customs is also required to treat legitimate parallel market ("gray market") importers no differently than it would treat any other legitimate importer (i.e., subject to selective enforcement, free of unnecessary, lengthy or costly delays). C.F. K. Mart Corp. v. Cartier, _____ U.S. _____, (May 31, 1988). Customs often falls short of the mark in the handling of parallel market merchandise for a variety of reasons. One of those reasons appears to be the cost with which unsupportable claims of potentially counterfeit foods are treated seriously by the Customs Service.

In one situation which has come to our attention, Customs received a letter from a confidential informant which apparently identified more than twenty importing companies as probable importers of counterfeit Yves St. Laurent Opium perfume. On April 16, 1984, the Customs Service sent a memorandum to the field regarding this probable problem, specifically identifying each of the named importers.

As a result of that memorandum, at least one of those importers was treated as a high risk importer. Its shipments were detained for unusually long periods of time by Customs officials who stated that prompt consideration was not appropriate since the importer had been identified as a "counterfeiter." In fact, the importer has never been involved with counterfeit goods, nor has it ever been publicly accused of buying or selling such goods. It is a small and legitimate importer of parallel market merchandise with a history of compliance with all Customs regulations.

The confidential informer apparently was free to file statements with the Customs Service without submitting itself to a system under which it could be penalized or held responsible for its misrepresentations. Customs accepted this unsolicited informer's letter on its face, without verifying the claim or contacting the importer to determine its truth. Customs apparently acted immediately upon receiving this letter by notifying the field officers regarding the potential counterfeiters. We are without the vaguest hint that the letter could have been well-intentioned, and Customs has never indicated that any inquiry or punitive action was initiated against the informer.

Importers are unable to protect themselves from confidential informants who seek to disrupt the stream of commerce and affect competition by supplying false information to the government. Customs and the federal courts deny importers access to information which would identify confidential informers. 5 U.S.C. § 552(b)(7)(D). Thus, Customs and not the importer must be responsible for testing the good faith and truthfulness of informants.

Customs should hold the informants liable for either civil or criminal penalties where false information is knowingly supplied. Customs should not accept and rely on information from informants without testing the truth and without punishing informants for misinformation.

4. Customs Should Be Held More Strictly Responsible For Maintaining The Confidentiality Of The Names And Addresses Of Importers And Exporters.

Congress has twice adopted legislation which specifically requires the Customs Service to keep confidential the names and addresses of importers and exporters of merchandise whenever requested. 19 U.S.C. § 1431(c)(1)(A) and 46 U.S.C. § 93(c)(1). Under these provisions a United States importer or a United States exporter may file a simple "certification" claiming confidential treatment and Customs must automatically provide that treatment for two years.

For several years the Journal of Commerce has routinely collected and published information identifying importers and exporters and their transactions, while preserving the confidentiality of those companies filing certifications. The Journal used a computer program which was designed to recognize variations in the spellings of company names as they might appear in documents on file with Customs. However, the Customs Service is now in the process of taking over the task of putting names into its computer but will not develop or implement a program capable of detecting variations in spellings. Instead, Customs has attempted to escape its responsibility to preserve confidential information by requiring the importers and exporters to supply every conceivable spelling variation to the government so it might put each of those variations into the computer. Thus, "ABC Importing, Inc." must imagine and supply Customs with every conceivable variation of its name which might appear on an ocean manifest. For example, "A.B.C. Importing, Inc." and "ABC Importing, Inc., "ABC Imp., Inc." and "A.B.C. Imp., Inc.," etc. The variations, according to Customs, are endless; not only should abbreviations and spelling errors be supplied, but changes in spacing between names and letters if not individually supplied, will be missed by the Customs computer.

Clearly, Customs has a more substantial burden to protect confidentiality than it is willing to undertake. When Customs fails to implement reasonable precautions to protect confidentiality, the law should provide specific penalties for unauthorized disclosures by the Customs Service, such as 18 U.S.C. § 1905. Moreover, there can be no substitution for meaningful enforcement by Customs Service since the harm caused by an unauthorized disclosure is often irreparable.

5. Customs Should Be Required To Give Notice To The Public Of Information Which Changes The Admissibility Of Merchandise Into The United States.

Restricted or prohibited merchandise is detained, seized or forfeited by the Customs Service, whether or not the importer knew that the goods were illegal. Consequently, legitimate importers should be permitted to avoid involvement with such merchandise by creation of requirements under which the Customs Service gives public notice of relevant, publicly releasable information in its possession. Two very different examples illustrate disparate situations in which the problem arises and the types of solutions which might be adopted.

First, if the Customs Service accepts a new trademark registration for "Brand X" cologne under which it will prohibit importation of "Brand X" by all but a specific authorized company, Customs currently enforces that restriction immediately. 19 C.F.R. § 133.4. A new restriction will apply to all merchandise offered for importation after acceptance of the trademark by Customs, no matter how long before that date the importer had made its purchase. When Customs changed the registration of the fragrance products bearing the name of "Cacharel" and "Anais Anais," it gave no notice to the public and seized many individual shipments, despite the fact that they had long histories of importing merchandise while it was unrestricted, had no notice of the new restriction and had even relied upon advice from customs that the product was unrestricted at the time they made their purchases. Relief was provided after somewhat frantic deliberations, but we are not aware of establishment of any new rule to prevent reoccurrence of the problem.

A second example occurred when manufacturers of some fragrance products began adding minute amounts of prohibited fluorocarbons into the otherwise acceptable propellants for their products. The additional and new ingredient was not identified on product labels or in any other public notice. However, the new ingredient had a substantial impact on the product, converting it from an admissible product into a prohibited article. At one point, a Miami customs official estimated that at least six seizures per month of such merchandise were taking place in the Miami Customs District, but Customs and F.D.A. refused to publicly identify the products involved.

In both instances, legitimate importers certainly would have avoided purchasing the inadmissible merchandise if they had any knowledge of the restrictions. By failing to give notice, the Customs Service subjects such importers to significant monetary losses, while burdening Customs Service officials with totally unnecessary administrative tasks: inspection, detention, forfeiture, penalty and mitigation procedures.

CONCLUSION

This presentation is intended to survey five areas of genuine concern that have come to my firm's attention in the course of its representation of importers under the customs laws. We would be very pleased to provide more specific information to the Committee on any matter which it wishes to address in more detail. In several instances we have already shared more particular background information with the Committee's investigator.

Thank you again for the opportunity to contribute to the Committee's important work.

Respectfully Submitted,

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Chairman PICKLE. Thank you, Mr. Sandler.

Now, Mr. Wegener, are you next to testify?

Mr. WEGENER. According to the list, I am not next, but if you want me to proceed, I will be glad to do it.

Chairman PICKLE. Why don't we proceed.

STATEMENT OF PAUL F. WEGENER, PRESIDENT, NATIONAL CUSTOMS BROKERS & FORWARDERS ASSOCIATION OF AMERICA, INC.

Mr. WEGENER. Mr. Chairman, I am Paul Wegener, of M.G. Maher & Co., a customs house broker and freight forwarder from New Orleans, La. I am also acting and appearing today as the president of the National Customs Brokers & Forwarders Association of America.

While freight forwarders are largely concerned with the exportation of goods overseas, customs brokers serve as the primary interface between the U.S. Customs Service and the broker's client—the importer. We provide a wide range of service to the customer—preparing documents, collecting duties, filing papers and payments with the Government, and a myriad of other detailed transactions. We are not only the importer's agent to Customs, we are his facilitator, his consultant, his expert on commercial trade. Contrary to the notion that automation will phase out the need for customs brokers, the ever-increasing complexity of the business of importing guarantees our future. We have been in business since the time of the Phoenicians, and we can expect our services to be essential to our customers for as long as we can imagine.

As customs brokers, our priorities are clear: The importer is our first responsibility, and our relationship with Customs is ever based on the pursuit of his best interests. To the extent that customs programs and practices are counterproductive to that end, you will hear brokers complain to Congress, and it is in this context that we appear today. Customs could be doing a much better job in collecting revenues and facilitating trade. Many of the other witnesses have illustrated that. As the person closest to this problem, a broker will reinforce this point instantly.

It may be instructive to identify a few additional examples of this: CES or centralized examination sites are publicly contracted, privately run facilities where cargo is routed for inspection. Rather than Customs inspectors roaming over miles of dock and warehouse space to locate the goods to be examined, Customs developed a plan for centralization that seems to make sense. The Washington, D.C. formula did make sense in the seaport of Los Angeles; centralization improved the processing time, focused movement of the inspectors, and provided a more orderly system. However, it did not make sense in New York's JFK Airport, as GAO found out. An airport is inherently centralized, and the transfer of goods to an off-airport site decentralizes the transportation process. It exposed goods to pilferage, had enormous costs in time and money, and drew the enmity of carriers, brokers and Treasury employees alike. It makes no sense in Laredo, where border delays are only exacerbated by a system of separating cargo at the line for diversion elsewhere. In fact, CES works only where the agency takes pains to listen to commercial sector ideas and adopt those that make sense. A formula approach, together with a lack of predictability in its operation, have proven a poor mix, as you in the Congress concluded last year. A GAO audit has only begun to scratch the surface but will ultimately fall short of rationalizing Customs' dogged insistence on a formula for centralization that looked good on paper, but is impractical in application.

Fortunately, Mr. Chairman, the Ways and Means Committee, principally through the efforts of Messrs. Downey and McGrath, suspended some CES operations and commissioned a detailed GAO study to see where the changes are needed. That study is not yet complete, and we will ask that the committee continue the suspension through the end of this year.

Another area of concern is selectivity, and we have heard about it today. Selectivity is at the heart of the Customs enforcement operations. In a nutshell, it is the automated decision as to where and when to examine cargo. Within the automated broker interface, the ABI, which you have heard about, where brokers process import entries through an automated communication system linked directly to Customs, the program maintains a profile on importers, foreign manufacturers, products and the like to determine where there is some likelihood that Customs laws may not be being observed. Based on the entry, the system may then call for an intensive examination of the imported merchandise. This is a costly and time-consuming process, for both Customs and the importer, but is invoked as a necessary element of law enforcement.

The increasing reliance that Customs places on selectivity to make its decisions is of concern to many trade professionals. While admittedly Customs cannot make coherent, thoughtful decisions about all the cargo that it must examine, there is good evidence to show that this automated system is becoming less a tool to enhance decisionmaking by the Customs Service, but increasingly a substitute for that process altogether. In other words, Customs is becoming a captive of its own automated processes. There is less and less opportunity for inspectors to override this automated judgment and more and more instances of automation run amuck.

A case in point: One importer in Atlanta filed 17 entries in May of this year for footwear. Selectivity, apparently determining its judgment on the TSUSA, or classification of the commodity, called for examinations in at least one container out of every shipment. Customs examined 55 of the 75 containers, and in one shipment 10 out of 10 containers were examined. The cost to the importer for moving his goods to the examination site was approximately $100 per container. Additionally, examination charges ran at $15 to $250 per container depending on the intensity of the examination.

What was the bottom line on this? Customs found nothing. Surely, somewhere over the 30 days it should occur to Customs that selectivity was providing a false lead.

Our experience with selectivity produces the following conclusions: Customs reliance on automation create instances of costly and irrational results. That is clear.

The service does not dedicate sufficient manpower to maintaining its automated systems so that their results can be reliable. In these examples, an update of the selectivity criteria would have prevented Customs examiners from running up blind alleys and permitted them more time, better spent, for examination.

An interspersion of the human element in an automated process is critical. Customs' view of a totally automated world needs an adjustment towards practicality.

Availability of import specialists is another area. At the heart of Customs and its efforts at enforcement is the customs import specialist, an individual who has become an expert at compliance and whose function it is to make certain that entries can be filed with certainty and confidence. As the recent McKinsey report properly concluded, the greatest single concern in the commercial sector is predictability. Consultation with an import specialist has historically brought this important ingredient into reality. For the customs broker, this is a person who can provide reliable, technical advise on a classification to help facilities correct processing of documentations and payment of duty. From our perspective, it frees our clients from the danger of penalties and seizures, while from Customs' point of view it minimizes avoidable errors and permits the targeting of Customs' resources towards actual incompetence and wrongdoing.

In recent years, Customs had deemphasized its role in assisting importers toward compliance and has instead resorted to increased reliance on the heavy-handed tactics for which it has become notorious—huge penalties and seizures. To compound the shortfall, the agency has created incentives within its personnel system to steer qualified personnel away from this function and to motivate those filling that role to an enforcement orientation rather than a compliance orientation. This has resulted in the degradation of the quality of those answers when they are received.

My last point is the exceptional treatment we see for the couriered shipments, as they are referred to. It has really created some severe competitive disadvantages for Customs brokers, but equally important to Congress threatens to degrade compliance and enforcement processes to the detriment of both the Customs Service and the importers alike. Courier services, now called integrated carriers, are little more than the linking of transportation modes to establish door-to-door delivery. As Flying Tigers and Delta are proving, there is nothing unique about Federal Express or UPS that cannot be duplicated by the linking of ground delivery to an air cargo operation.

I think Mr. Carl Soller will have a little more to say, and for the sake of brevity, I will not discuss that any further.

Mr. Chairman, the NCBFAA is grateful for the opportunity to testify on behalf of our clients, the importing public. We look forward to exploring these and other issues with the committee as it continues its review of Customs commercial operations.

I thank you.

[The statement of Mr. Wegener follows:]

STATEMENT OF PAUL F. WEGENER, PRESIDENT, NATIONAL CUSTOMS BROKERS & FORWARDERS ASSOCIATION OF AMERICA, INC.

Mr. Chairman: I am Paul F. Wegener of M.G. Maher & Company, Inc. of New Orleans, Louisiana, and President of the National Customs Brokers and Forwarders Association of America. I am pleased to appear before you today as spokesman for America's customs brokers and ocean freight forwarders.

While freight forwarders are largely concerned with the exportation of goods overseas, customs brokers serve as the primary interface between the U.S. Customs Service and the broker's client - the importer. We provide a wide range of services to this customer - preparing documentation, collecting duties, filing papers and payments with the government, and a myriad of other detailed transactions. We are not only the importer's agent to Customs, we are his facilitator, his consultant, his expert on commercial trade. Contrary to the notion that automation will phase out the need for a customs broker, the ever-increasing complexity of the business of importing guarantees our future. We have been in business since the time of the Phoenicians. Surely we can expect our services to be essential to our customers for as long as we can imagine.

As customs brokers, our priorities are clear: the importer is our first responsibility and our relationship with Customs is ever based on the pursuit of his best interests. To the extent that Customs programs and practices are counter-productive to that end, you will hear brokers complain to Congress and it is in this context that we appear today. Customs could be doing a much better job in collecting revenues and facilitating trade. Many of the other witnesses have illustrated that. As the person closest to this problem, a broker will reinforce this point instantly.

While Commissioners come and go, the most consistently lingering problem is that the Customs Service is so reliant on symbols, easy answers and appearances that the agency fails to attack the task of getting the job done -- by thinking through its ideas to ensure that they can succeed and by minimizing cost and confusion rather than creating it.

There are many, many examples of this and it may be instructive to identify a few:

1. CES or centralized examination sites are publicly-contracted, private-run facilities where cargo is routed for inspection. Rather than customs inspectors roaming over miles of dock and warehouse space to locate the goods to be examined, Customs developed a plan for centralization that seemed to make sense. The Washington, D.C., formula did make sense in the seaport of Los Angeles: centralization improved processing time, focused movement of inspectors and provided a more orderly system. It did not make sense in New York's JFK Airport, as GAO found. An airport is inherently centralized and transfer of goods to an off-airport site decentralized the transportation process. It exposed goods to pilferage, had enormous costs in

time and money, and drew the enmity of carriers, brokers and Treasury employees alike. It made no sense in Laredo, where border delays are only exacerbated by a system of separating cargo at the line for diversion elsewhere. In fact, CES works only where the agency takes pains to listen to commercial sector ideas and adopt those that make sense. A "formula approach", together with a lack of predictability in its operation, have proven a poor mix - as you in the Congress concluded last year. A GAO audit has only begun to scratch the surface, but will ultimately fall far short of rationalizing Customs' dogged insistence on a formula for centralization that looked good on paper but is impractical in application.

CES had the following ingredients:

A) As we said, it illustrates the romance that Customs has with "centralization" even where the practical effect is quite the opposite.

B) CES was a program conceived in Washington and imposed locally, ignoring the communities' comments and criticisms.

C) It shifted traditional Customs costs of operation to the private sector even though trading interests began to pay a user fee almost simultaneously for just such a purpose.

D) CES, in many instances, created delays and new burdens on the smooth flow of cargo through our ports.

Fortunately, Mr. Chairman, the Ways and Means Committee, principally through the efforts of Messrs. Downey and McGrath, suspended some CES operations and commissioned a detailed GAO study to see where changes are needed. That study is not yet complete and we will ask the Committee to continue the suspension through the end of this year.

2. Selectivity is at the heart of Customs enforcement operations. In a nutshell, it is the automated decision as to where to examine cargo. Within the Automated Broker Interface (ABI) system where brokers process import entries through an automated communication link directly to Customs, the program maintains a profile on importers, foreign manufacturers, products and the like, to determine where there is some likelihood that Customs laws may not be being observed. Based on the entry, the system may then call for an intensive examination of the imported merchandise. This is a costly and time-consuming process -- for both Customs and the importer -- but is invoked as a necessary element of law enforcement.

The increasing reliance that Customs places on "selectivity" to make its decisions is of concern to many trade professionals. While admittedly Customs cannot make coherent, thoughtful decisions about all the cargo that it must examine, there is good evidence to show that this automated system is becomeing less a tool to enhance decision-making by the Customs Service, but increasingly a substitute for that process altogether. In other words, Customs is becoming a captive of its own automated processes. There is less and less opportunity for inspectors to override this automated judgment and more and more instances of automation run amuck.

A case in point: one importer in Atlanta filed 17 entries in May for footwear. "Selectivity", apparently premising its judgment on the TSUSA (or classification) number, called for examinations in at least one container out of every shipment. Customs examined 55 of 75 containers and in one shipment, 10 out of 10. The cost to the importer for moving his goods to the examination site was approximately $100 per container. Additionally, examination charges ran $15-250 per container depending on the intensity of the exam. The bottom-line? Customs found nothing.

In another case involving machine parts (tractor and diesel engines), Customs selectivity called for examinations on an average of 4 times per week for almost 4 months. Again, Customs found nothing.

Our experience with selectivity produces the following conclusions:

1) Customs reliance on automation creates instances of costly and irrational results. That is clear.

2) The Service does not dedicate sufficient manpower to maintaining its automated systems so that their results can be reliable. In these examples, an update of the selectivity criteria would have prevented Customs examiners from running up blind alleys and permitted them more time, better spent, for examination.

3) An interspersion of the human element in an automated process is critical. Customs' view of a totally automated world needs an adjustment towards practicality.

3. Availability of Import Specialists. At the heart of Customs and its efforts at enforcement is the Customs import specialist, an individual who has become expert at compliance and whose function it is to make certain that entries can be filed with certainty and confidence. As the recent McKinsey Report properly concluded, the greatest single concern in the commercial sector is predictability. Consultation with an import specialist has historically brought this important ingredient into reality. For the customs broker, this is a person who can provide reliable, technical advice on a classification, to facilitate the correct processing of documentation and payment of duty. From our perspective, it frees our clients of the danger of penalties and seizures, while from Customs' point-of-view, it minimizes

avoidable error and permits the targeting of Customs' resources towards actual incompetence or wrongdoing.

In recent years, Customs had de-emphasized its role in assisting importers towards compliance and has instead resorted to increased reliance on the heavy-handed tactics for which it has become notorious - huge penalties and seizures. In many instances, the punishment vastly overshadows the violation. As to the import specialist, his ranks have shrunk and his availability has been reduced. Uniformly, across the country, customs brokers are experiencing a sharply reduced resource. Staffing levels are down, with a consequently sharp upturn in workload. It is little wonder that calls to an import specialist are greeted with the inevitable "busy" signal. Phone messages left on recordings are often unanswered for 48 hours. Flex time has permitted workdays to end at 3 p.m. -- usually inconsistent with that of the commercial sector. And, recently, Customs has taken to establishing prime working hours of the day as "quiet time" where the Service has purposely made the import specialist unavailable to the public. Then, to compound the shortfall, the agency has created incentives within its personnel system to steer qualified personnel away from this function and to motivate those filling that role to an enforcement orientation rather than a compliance orientation. This has resulted in degradation of the quality of those answers when they are received. For example, knowledge of the countervailing duty rulings and retrieval of such rulings through the import specialist are inadequate.

What do we conclude?

A. Customs reliance on automation and its zeal for enforcement have short-changed this valuable spokesman for voluntary compliance.

B. The public relations value of drug enforcement and high-profile seizure has caused less publicized avenues for reaching the same objectives to suffer.

C. People - especially those representing institutional knowledge and expertise - cannot be casually replaced by computers.

4. Exceptional treatment for couriered shipments has created severe competitive disadvantage for customs brokers, but equally important to Congress threatens to degrade compliance and enforcement processes to the detriment of both the Customs Service and importers alike.

Through two rulemaking proposals in late 1987, Customs has acquiesced in a new filing system and provided new service features for couriers that, on the surface, position the agency as exponents of modernity. Customs argues that it should not be a factor in the economic market place and therefore should expedite, not impede, progress towards new transportation and delivery systems. Wrapped in the flag of progress, Customs threatens the undoing of an effective system of compliance and, in fact, tilts the economic balance towards an alternate delivery mode that is not really new.

First, courier services (now termed "integrated carriers") are little more than the linking of transportation modes to establish door-to-door delivery. As Flying Tigers and Delta are proving, there is nothing unique about Federal Express or UPS that cannot be duplicated by the linking of ground delivery to an air cargo operation.

What then has Customs done to turn its procedures on their head? Documentation is no longer to be predicated on an importer providing correct information for which he will be held ultimately accountable. The primary information for import processing comes from the shipper, not the importer. We see this as degrading the reliability of entry data, basically because the overseas-based shipper is significantly less accountable to Customs than is the importer and his broker. Specifically too, we see the following increased risks for the importer;

1. Section 592 of Tariff Act of 1930 as amended (19 U.S.C. 1592) provides in general for personal penalties (and in some cases seizure of the goods) if the goods are entered or introduced into U.S. commerce by means of any document, written statement, or act which is material or false, or any omission which is material. The statute also provides for personal penalties for those who "aid or abet" any violations. Thus, it is possible that the importer (ultimate consignee/purchaser) of goods entered via the courier process may be accused of a violation of Section 592 even though he had no actual participation in the courier's entry, nor was even contacted in advance of the entry with regard to the entered rate, declared value, etc.

2. An even more stringent statute, 19 U.S.C. 1595a, provides for the seizure and forfeiture of goods which are introduced or attempted to be introduced into the United States contrary to law (other than in violation of Section 592). Since enactment of this provision in 1986, the Customs Service has proven quite eager to use this new authority, and there is nothing whatsoever in the statutory language to prevent Customs from following the goods into the hands of the importer and seizing them even though he had no knowledge of entry details and was himself innocent of any wrongdoing in connection therewith.

3. Additionally, on behalf of other agencies, Customs enforces approximately 400 statutes placing restrictions and conditions of one sort or another on imported merchandise. Many of these statutes also contemplate tracing non-complying merchandise into the hands of the ultimate consignee and imposing punitive action against the goods, or their owner.

4. Under Public Law 97-446 of January 20, 1983, the owner or purchaser of the goods is primarily responsible for preparing and filing the required entry documentation [19 U.S.C. 1484(a)(1)(C)]. Alternatively, a broker may be "appropriately designated" to do this, by the owner or purchaser or consignee. However, Customs' failure to promulgate implementing regulations adequately ensuring that couriered shipments will be entered by a broker designated by the owner or purchaser has fostered the couriers' practice of routinely entering goods via the couriers' own brokers. In practical effect, this means that the owner or purchaser will rarely be contacted prior to entry to obtain information required to ensure proper entry, or even be timely advised that the shipment is being entered by a particular courier/broker under a particular TSUSA number, etc. Consequently, the importer has little, if any, chance to specify the correct entry data, or ensure that special conditions or restrictions on the imported goods have been properly complied with.

Another element of our concern is the availability of Customs commercial services to all sectors of the air cargo industry, not just the select few. Reduced documentation requirements may cast the appearance of cutting paperwork, unless they are only enjoyed by so-called courier services. Twenty-four hour service may seem like Customs' responsiveness to commercial sector needs, but, if this service is withheld from traditional carriers, it serves only to advantage a distinct minority. These are issues that the Advocate's office of the Small Business Administration addressed when they opposed Customs' plan to implement its December courier rulemaking proposal. And, these are issues that brokers address as they see their importing clients driven towards one form of cargo delivery service by a self-styled "market-place neutral" agency.

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Mr. Chairman, NCBFAA is grateful for this opportunity to testify on behalf of its clients, the importing public. We look forward to exploring these and other issues with the Committee as it continues its review of Customs commercial operations.

Chairman PICKLE. Mr. Wegener, we thank you.

Now, I believe that the next witness would be Mr. Rowan. All of your statements will be included in the record. I know you summarize them, and we appreciate that.

Now, Mr. Rowan.

STATEMENT OF CARL T. ROWAN, JR., ESQ., MILGRIM, THOMAJAN & LEE, WASHINGTON, D.C.

Mr. ROWAN. Thank you, Mr. Chairman, Mr. Frenzel.

My name is Carl T. Rowan, Jr. I am a member of the law firm of Milgrim, Thomajan & Lee. With me today is my colleague, Elizabeth Jaffe. We would both like to thank the subcommittee for allowing us the opportunity to appear here today and to testify with regard to these important issues.

My law firm represents clients before the Customs Service in a wide range of areas, and I am sorry to appear here today to say that we are deeply concerned that the agency has lost its sense of mission and its ability to set its priorities. I will try to focus my remarks today upon a single aspect of Customs Service activities, the duty drawback programs of the Tariff Act of 1930.

In this area of utmost importance to the U.S. balance of trade, the Customs Service has largely abandoned its responsibilities, and has stripped American businesses of a tool widely recognized as vital to their ability to compete abroad. Having existing for over 50 years, drawback is one of the Nation's oldest tools for promoting U.S. exports and, perhaps more importantly, protecting American jobs in the manufacturing sector.

The policy concept of drawback is really quite simple. Duties on imports are intended to apply to goods consumed in the United States. Where, however, those imports become components of goods that are exported, those same duties may render the final exports to be uncompetitive in world markets. Drawback rectifies this problem by allowing U.S. manufacturers to obtain duty refunds where imports become part of exported goods.

Now, this has two important effects. The first is that it allows American businesses to select the most economical raw materials and components without regard to the place of origin. But it also has the effect of maximizing the amount of manufacturing activity and jobs right here on our own shores. Unfortunately, and almost uniformly, however, our clients have found the drawback program to be an exercise in almost total frustration, from which few refunds are granted even in the most straightforward and simple cases, and in which the costs in terms of legal and consulting fees can sometimes outweigh the benefits. Perhaps worse, drawback applicants and their applications are treated with a degree of suspicion that would be more logically accorded Customs drug interdiction programs.

Now, as practitioners in the field, we see the following five root problems: First, the Customs Service has failed to allocate sufficient funds to properly administer the drawback program. You will find that even for the simplest cases, the processing of drawback paperwork takes months and even years to accomplish. This is totally unacceptable to those companies that are trying to take part in this important program.

Second, the Customs Service has failed to maintain a core of staff personnel who are familiar with the drawback program, its rules and interpretations. The drawback program is not unlike some of the other programs that people have testified about today in that arbitrary transfers and retirements have robbed the agency of its historical expertise in drawback. There has been no effort made to replace lost experience.

Having said that, I do not wish to impugn the intelligence or character of the Customs personnel; they are simply in the unfortunate position that I would find myself in if someone told me that, as of tomorrow morning, I have to stop being a lawyer and I have to report to a job as a certified public accountant. I do not know anything about accounting, and without any training it is going to be a long, bumpy ride before I am able to provide any meaningful service to the people that I am supposed to help.

Next, the Customs Service has failed to create any semblance of uniformity in the interpretation and administration of the drawback program. Each region and the Customs headquarters itself have adopted their own practices and interpretations and policies. You will find that drawback opportunities may exist in one region that do not exist in the other. The headquarters and regions are not aware of each other's practices. And in some cases, headquarters and regions take such divergent opinions that they wind up arguing with each other quite adamantly that the other is the only proper form for processing a drawback application. The result of that is that drawback opportunities which have been mandated by law are lost to the client altogether.

Next the Customs Service has failed to promote the drawback program as a positive aspect of U.S. trade policy. As people have said earlier with regard to the enforcement mentality, rather than applying the premise that American businesses are trying to legitimately participate in international trade, Customs Service officials have taken on the role of policemen looking for wrongdoing in a program that they seem to regard as some sort of ill-advised Government subsidy.

Last, there has been no effort on the part of the Customs Service to help the American business community understand and readily utilize the drawback program. I think you will find that if you go to almost any other Federal agency, you will find pamphlets and brochures and how-to guides to help citizens comprehend and deal with programs that the agencies feel are important. This has not happened at the Customs Service with regard to drawback, and they tend to treat it as some sort of secret law, which, unfortunately, has been kept secret not only from the business community but from many of the Customs Service personnel as well. The current state of affairs is that if you want to process a drawback application, you have to arm yourself with a battery of lawyers and consultants to go down and beat on the Customs Service for months in order to accomplish your goals. And the costs have simply become prohibitive.

Having said all that, I would like to have one minute to conclude with five commonsensical, I think, recommendations to resolve the problem, the first being that it is simply mandatory that if the Customs Service wants this program to succeed in any way, shape or form, they are going to have to allocate sufficient resources to the drawback program. Once they make the decision that it is a priority within the agency, immediate attention should be given to training agency personnel, keeping and rewarding the qualified agency personnel in key drawback positions. The turnover rate in the drawback program is incredible. There does not seem to be any rational reason for it.

Third—and this is crucial—the Customs Service must establish and make public uniform rules of interpretations and practice. It is simply potluck now. You do not know from region to region how a particular ruling is going to come down, how your application is going to be viewed. There has to be some uniformity and certainty to the process.

Next, educate the public by preparing publications for business and industry seminars in drawback procedures.

Last, I think that the Customs Service must announce a protrade, prodrawback policy whereby companies who follow the rules can obtain drawback without delay.

That concludes my remarks, and I thank you for the opportunity to be here today.

[The statement of Mr. Rowan follows:]

Testimony of Carl T. Rowan, Jr.
Milgrim Thomajan & Lee P.C.
before the
Oversight Subcommittee of
the Committee on Ways and Means

Hearings on the United States Customs Service

June 9, 1988

My name is Carl T. Rowan, Jr. I am a member of the law firm of Milgrim Thomajan & Lee P.C., resident in the firm's Washington, D.C. offices. Milgrim Thomajan specializes in matters concerning U.S. import/export laws and in this context, regularly represents clients before the U.S. Customs Service. As first hand observers of the administration of Customs Service programs, we are deeply concerned that the agency has lost both its ability to set priorities and its sense of mission. I therefore join my fellow panel members in asking for a threshold revitalization of the Customs Service agenda.

I wish to focus my remarks today, however, upon a single aspect of the Custom Service's activities, the duty drawback programs of the Tariff Act of 1930. 19 U.S.C. § 1313. In this area of utmost importance to the U.S. balance of trade, the Customs Service largely has abandoned its responsibilities, stripping American businessmen of a tool recognized as vital to their competitiveness abroad. In reshaping Customs Service priorities, we know of no better starting point than duty drawback.

Drawback is one of the nation's oldest tools for promoting U.S. exports and protecting American jobs in the manufacturing sector. The policy concept is simple. Duties on imports are intended to apply to goods consumed in the United States. Where, on the other hand, imports become components of goods that are exported, the imposition of duties may render the final exports uncompetitive in world markets. Drawback rectifies the problem by allowing U.S. manufacturers to obtain duty refunds where imports become part of exported goods, thus allowing American businessmen to select the most economical raw materials or components without regard to their origin. The net effect of the drawback is to keep the maximum amount of manufacturing activities on our own shores, even if in some circumstances, imported components must be used.

It should go without saying that in this period of great concern as to U.S. trade deficits, the duty drawback program is of critical importance. Congress last month passed the massive Omnibus Trade Bill, replete with mechanisms to protect the integrity of U.S. foreign trade activities. At the same time, however, a trade promotive program that has been on the books for nearly a century has fallen into a state of total disrepair.

We work every day with companies that seek to utilize the drawback program to assist their competitiveness in the international marketplace. Our clients necessarily are both importers and exporters of a variety of raw materials, component goods and finished items, including petroleum, bulk chemicals, and a variety of manufactured commodities. In many instances, their ability to compete internationally is a matter of a fraction of a penny on each exported item. The availability of drawback refunds will often determine whether their American made goods can be sold abroad at any profit at all.

Uniformally, however, our clients have found the drawback program to be an exercise in frustration from which few refunds are granted even in the most straight-forward cases and in which the costs, in terms of legal and other fees, can outweigh the benefits. Indeed, more often than not, drawback applications (and applicants) are treated with a degree of suspicion more logically accorded Customs' drug interdiction programs. As one of our clients put it, it is easier for criminals to bring narcotics through Kennedy Airport than obtain a drawback refund. (See attached Addendum for examples of representative problems.)

As practitioners in this field, we see the following root problems:

- The Customs Service has failed to allocate sufficient funds to properly administer the drawback program. Both regionally and at Customs Service Headquarters in Washington, drawback claims and applications have been subjected to constant delays and backlogs. For even the simplest cases, it takes months or even years to process paperwork and receive refunds.

- The Customs Service has failed to maintain a cadre of staff personnel familiar with the drawback program. Transfers of personnel to drug enforcement and other supposed priority programs, together with retirements, have robbed the agency of its historical expertise in drawback. No effort has been made to replace lost experts.

- The Customs Service has failed to create uniformity in the interpretation and administration of the drawback program. Consequently, each region and Customs Headquarters itself has created its own procedures and adopted its own interpretations. Drawback opportunities available in one region often are not available in another. Customs Service Headquarters and the regions are unaware of each other's practices. In some cases, Headquarters and the regions have taken such divergent positions that each office has asserted that only the other is the proper forum for particular drawback applications. The net effect has been that drawback opportunities mandated by law are denied altogether.

- The Customs Service has failed to promote the drawback program as a positive aspect of U.S. trade policy. Rather than applying the premise that American businessmen are trying legitimately to participate in international trade, Customs Service officials take the role of policemen looking for wrongdoing.

- No effort has been made to help businessmen to understand and readily utilize the drawback program. Whereas nearly every other federal agency publishes pamphlets and how-to-do guides with respect to rules and guidelines, the rules of drawback largely are a "secret law" known only to the Customs Service, and even then, Customs Service personnel themselves often are in the dark. Processing of claims accordingly requires the services of special consultants and attorneys. Costs have become prohibitive.

Curing the threshold deficiencies of the drawback program need not involve special initiatives. The answer is a matter of common sense. We recommend the following:

- Allocate sufficient resources to drawback programs.
- Make drawback programs an agency priority with immediate attention to training agency personnel. Keep and reward qualified agency personnel in key drawback positions.
- Establish and make public uniform rules of interpretation and practice.
- Educate the public by preparing publications for business and industry seminars in drawback procedures.
- Announce a pro-trade, pro-drawback policy whereby companies following the rules obtain drawback without delay.

* * *

We thank the members of the Committee for their attention and will be happy to answer any questions.

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ADDENDUM

Introduction

The following are two examples which are representative of the types of problems encountered by companies which interact with the U.S. Customs Service in their attempts to participate in the duty drawback program.

Example A

Whether due to work backlog, understaffing, or redirection of resources, duty drawback applications regularly are mired in the Customs' bureaucracy for months. In one case, Milgrim Thomajan submitted to Customs' Headquarters, on behalf of a client, an application to operate under a specific drawback contract in order to obtain refunds for duties paid on gasoline blendstocks where the company later exported finished gasoline. This initial application was filed with Customs in March 1987. At stake was several hundred thousand dollars of potential duty refunds.

In August, 1987, five months later, we received a letter from the Chief of the Drawback and Bonds Branch, requesting that we provide him with additional information regarding the molecular composition of the products involved in the drawback claim. Not only would expensive, sophisticated testing be required for such an analysis, but it is totally irrelevant to the issue of what constitutes a gasoline blendstock and extends far beyond previously established definitions of such products. Customs ultimately withdrew the request, but only after extensive haggling by a team of lawyers and chemical consultants. (Customs apparently believed that their sleuthing might uncover a different molecular structure in the finished gasoline product, thereby allowing for denial of the claim.) After an additional three months of responding to further inquiries and information requests with respect to this application, we were informed by Customs in November 1987 that the application would be approved. The approval was finally issued on January 4, 1988 - almost ten months from the date it was originally submitted.

The effect of this kind of lengthy delay in processing even the initial drawback contract application (which must be approved before actual claims may be filed) is to discourage companies from filing new applications while old applications are still pending. This creates a tremendous backlog for the company of potential claims totaling very significant sums of money in an industry which operates on very thin profit margins.

It is important to note that what was approved by Customs Headquarters was merely the contract for the drawback rate. Actual refund applications must then be submitted to Regional Offices, thereby making the client subject to the vagaries of regional bureaucracies for time periods and results which can differ greatly from region to region.

Example B

The problems associated with administrative delay are exacerbated in the petroleum area by an apparent confusion over the interpretation and application of Customs drawback rulings and regulations. By way of background, petroleum importers often seek to claim drawback under one of two "manufacturing" provisions. Under the "direct identification" provision, an importer may obtain a refund of the duty paid on merchandise that was itself used to manufacture a product that was later exported. 19 U.S.C. 1313(a). Among the criteria which an importer must meet in order to be eligible for direct identification drawback is establishing to the satisfaction of Customs that the imported commodity was actually employed in the production of the finished article and was not "comingled" with any domestic or duty-free product during such production.

The second type of manufacturing drawback available to importers is known as the "manufacturing substitution" provision. Under 19 U.S.C. 1313(b), an importer may file for drawback of duties paid with respect to imported items used to manufacture or produce goods of the type that are exported, but where domestic components of the same kind and quality are substituted in actual exports. In this context, the imported (and substituted) commodity must be sufficiently distinct from the exported product to demonstrate that "manufacture" occurred.

When, in March 1987, we submitted to Customs Headquarters Client A's application for authority to operate under a manufacturing substitution drawback contract, we were informed that the Company's import-export transactions might not be eligible for duty refunds under 19 U.S.C. 1313(b). The problem, as articulated to us by the Chief of the Drawback and Bonds Branch, was that Customs was not certain that blending operations performed on the imported and/or domestic products constituted manufacturing for the purpose of claiming duty drawback. Yet, Customs itself had previously ruled that such blending does indeed fulfill the requirement for manufacture - as we pointed out to the Customs staff during the initial stages of the drawback application procedure.*

In an equally frustrating exchange, we submitted a Customs' Regional office three applications to operate under a direct identification drawback contract on behalf of Client B in July 1987. Customs formally denied these applications in November 1987, based on its conclusion that, because the commodities are blended in tank at public terminals, there may be "comingling" of the imported product with other similar product. Although Client B was prepared to document the fact that no comingling did occur, Customs rejected the claims on the basis of the theoretical potential for comingling.

As an alternative to the direct identification claim, Customs suggested that Client B file a substitution proposal with Headquarters. However, the transactions raised the same issue of "manufacture" as was the case in Client A's then-pending application. We thus faced a "catch 22" situation: on the regional level we were precluded from claiming drawback because of the theoretical possibility of comingling while at Headquarters we were being told that substitution manufacture was unavailable because we had not "manufactured" the product!

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* U.S. Customs Service Letter Ruling, Reference No. 217115L (August 3, 1984).

Conclusion

These are but two examples of the kinds of problems that companies face when they attempt to obtain duty refunds under the drawback rules and regulations. Importers who, under the statute, appear to be entitled to such refunds (assuming that they comply with the applicable procedures) are met with resistance at every turn. Those companies who wish to run the bureaucratic gauntlet at Customs must arm themselves with a battery of lawyers and expert witnesses in order to press their cases. Not only is this expensive and time consuming for the importer, but the failure of Customs to properly administer the drawback program has a serious adverse impact upon the export activities of U.S. companies. Given this country's unacceptably high trade deficit, it would seem essential that programs such as drawback - which was designed to enable American products to compete effectively in world markets - were effectively administered.

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Chairman PICKLE. Thank you, Mr. Rowan, and I thank all of you. I know it is after 5 o'clock, and you have probably been here most—oh, we have another witness. Mr. Soller, I misunderstood. I thought you had already testified. I am all turned around about the order. You are the last, are you not?

Mr. SOLLER. In some ways, being the last gives me an advantage over everyone else since I had the opportunity to be here.

Chairman PICKLE. We will be glad to have your testimony.

STATEMENT OF CARL R. SOLLER, ESQ., SOLLER, SINGER & HORN, NEW YORK, N.Y.

Mr. SOLLER. I will not summarize my written testimony, but I will, I hope, try to shed some new light on areas that have not been covered today.

Frankly, the testimony that I heard today is somewhat frightening; even the employees of the Customs Service do not have any positive comments that the Customs Service is doing anything good. I think Congress has been aware of this; certain Members of Congress have been aware of this for a number of years. I know our law firm in its representation of the JFK Airport Customs Brokers Association, importers, container stations, warehouses, foreign freight forwarders, manufacturers, and so forth, have written Congress on many occasions regarding the inefficiencies of the U.S. Customs Service. I think we have all gotten the impression rather strongly today that, one, the Customs Service is understaffed; and, two, the Customs Service operates with an inefficient staff that is not particularly knowledgeable about the job they are supposed to perform.

I would raise the possibility that Customs is not understaffed, but they are, in fact, undereducated. The tariff schedules, the regulations, the laws of the Food and Drug Administration, the Fish and Wildlife Service, the Department of Commerce and the Department of Defense, all of which are within the jurisdiction and oversight of U.S. Customs, are rather complicated. I do not believe there is one individual in the Customs Service who has gone through an efficient training program to allow them to properly administer the laws they are directed to administer.

The first request I have ever seen where Customs was asked some hard questions recently came from this Oversight Subcommittee. That is, where Customs was asked certain statistics, which I also have requested, relating to not how many seizures the Customs Service made, but how many forfeitures resulted from those seizures? How many of those seizures were actually good seizures, and how many penalties resulted, and how much were the penalties that resulted?

I would venture to say, based on my experience and in conversations with my colleagues, most of the seizures did not result in forfeitures, and the amount of penalties was negligible compared to the economic disaster that befell the importers who lost sales and, in many cases, went out of business because of these improper seizures.

I think Jane O'Dell, who testified earlier, gave you a glimpse of why these seizures occur. There is, or was, in various ports in this country a point system. If an inspector made a seizure, if an import specialist was responsible for an increase in duties, that person got points toward promotion or additional salary or bonus. Never, to my knowledge, were any of these actions reviewed when the final results came in. Was that seizure overturned by the courts? Was that seizure overturned administratively? And were those points deducted?

They were not, and unfortunately, the employees of the U.S. Customs Service who performed these seizures are not held accountable for their bad acts. That is something that the Oversight Subcommittee must stress in its oversight of Customs. That is, make sure that Customs is responsible and that the superiors monitor their employees' performance and take appropriate action, in the same fashion they penalize importers for small variations of the law with extremely harsh economic measures.

The other point that I want to bring up, and this will lead into what Paul Wegener briefly discussed in terms of the courier situation, is the enforcement attitude of Customs. Prior to becoming an attorney specializing in Customs and trade law, I practiced criminal law for eight years, particularly in the area of drug enforcement. In my experience, U.S. Customs does not know how to do enforcement properly. They are the wrong agency to be in charge of interdicting drugs. There are too many examples in my office alone of criminal investigations that have gone awry because of the Customs agent not knowing what the Constitution says and is, in effect, blowing the investigation before it even gets to the U.S. attorney's office.

There are certain U.S. attorney's offices in New York State that will refuse, unless their arms are twisted, to take a case from U.S. Customs unless they were involved in the investigation from the inception.

I think it is wrong to allow Commissioner von Raab, who has no criminal law experience, no Customs law experience, to establish an air force to interdict drugs with a staff that does not know how to do it properly. The even more unfortunate part is we are getting hurt. The drugs are coming into the country, and the effort to stop drugs is being made in the wrong place. You do not stop drugs here in the United States. You stop drugs before they get on the plane to come into the United States.

There are proven ways to do that. They obviously would not work if they know it is stopped overseas. And I am certain that in other agencies, unfortunately, because of the jealousy between law enforcement agencies, they do not often share ideas. But these ways are known, and I think it is wrong to politicize the enforcement and the interdiction of drugs in the way that the Customs Service has done so.

Unfortunately, the enforcement attitude that has been generated by the Commissioner of Customs has made its way down to the inspector who is enforcing the Customs law on a day-to-day basis. Section 1595a(c) has been much bandied about, and we all heard that Customs is using it to make seizures that they did not and could not make in the past.

Why is that? I do not think it is because Customs feels that they must make seizures, but Customs does take the easy way out.

There are criminal sanctions that are available for Customs in fraud situations. There are 592 sanctions that are available for Customs where there is negligence, gross negligence, and fraud. What Customs has done is: We are going to seize the merchandise because we then have the leverage, whether the importer is right or wrong in what he did, to exact a penalty, and we do not have to do any investigation.

We had a case—in fact, prior to my testifying today I was on the phone—where Customs has claimed—and some of my colleagues not in Customs and trade law ask, How can you argue and how can you make a living arguing whether a fabric is hand loomed or power loomed? I ask myself that same question sometimes. But in any case, Customs made a seizure a couple of weeks ago claiming that a particular importation was power loomed and not hand loomed as the importer said. The importer was not at fault. Customs has not claimed that the importer is at fault.

In order for us to be able to combat what the Customs Service has said, we went to private labs and got a conclusory statement that there is no test that can determine whether something is power loomed or hand loomed. We asked the Customs Service for their lab analysis. The lab analysis came back with the conclusory statement that the importation was power loomed and not hand loomed.

We then asked for their work sheets to support that statement and were turned down based on their argument that it is not available under the Freedom of Information Act because it was done in pursuit of law enforcement purposes.

We know that the real reason Customs refused to give us those work papers is because they do not support on a rational basis their position.

The Customs Service allows for the courier services and express delivery services to clear merchandise within a very short period of time as compared with other air transportation means.

There is an interpretation by the U.S. Customs Service of a law that was sponsored by Mr. Frenzel on right to make entry, that if a courier service is a consignee, they have a right to appoint a broker to make entry in the name of the broker, even though the owner or purchaser of the merchandise who knows what the merchandise is and is responsible has not given up his authority to make entry of the merchandise on its own or to appoint a broker.

Now what does this do for the drug enforcement, and for other contraband enforcement efforts of Customs? You have a courier service who picks up thousands of parcels, both commercial and otherwise, in various parts of the world.

They rely on documentation that they have in their possession without any knowledge of what's in the package. They then give the information that they have a broker who prepares the entry documents when necessary, and makes a declaration as to what the merchandise is.

Customs opens the package, perhaps, and finds out that there are drugs inside. There unfortunately now is no culpable party. The courier service says, well, we only relied on the information we got. The customs broker who makes entry in his name says, well, we only relied on the information that we got from the courier service. And everyone is harmed and no one is helped, except for the Customs Service, that doesn't have to process those particular entries.

We have submitted many, many examples of importer complaints that this is an interference with their contractual relationship between their regular broker by the courier services, and have submitted numerous complaints to Congress to correct this situation or help the industry correct this situation.

Because what it does, it does not enhance the ability of Customs to clear merchandise in a proper fashion. What it does is, it allows merchandise to clear Customs so that they don't have to pay for it.

For some reason, Customs takes the position that if you're a courier or an express delivery service, you're not bringing in contraband.

And to the contrary, although the statistics again were denied to us based on an exception to the Freedom of Information Act, and if you will ask, I am sure you will get those statistics as a congressional body, we asked in Memphis for all statistics regarding entries of Federal Express, which is their hub, because it is our understanding that many thousands of entries, both formal and informal, go through Memphis each night in a 3-hour period.

How many of those packages could be inspected? Impossible. It is a treatment of a segment of the population that is highly prejudicial to both Customs and to the rest of the importing public.

To top it off, Customs has introduced regulatory proposals which are related to the legislation that was introduced a number of years ago to which I had referred before.

In those regulatory statements, they claim to have done economic impact studies and other required studies prior to the implementation of a rule. In our research and the research that the National Association had done, we both found that no such economic impact study was done.

The Small Business Administration requested that the Customs Service not publish a final rule, because they hadn't done it, even though they said they have. And in fact, by the way, it is our understanding that Customs has never done the requisite economic impact studies for any of their regulatory pronouncements.

But—and this typifies the arrogance of Customs from the top down—it appears that Customs in any case is going to try to publish a final rule, even though the Small Business Administration has asked them not to, and they are aware that they did not comply with the law.

It is imperative that this Committee remain as an active oversight committee overlooking the shoulder of the United States Customs Service until it and the importing public is convinced that the U.S. Customs Service is not only doing its job, but is doing its job properly, and is doing its job in a knowing fashion, which we don't think, and I think the comments today, lead to that conclusion, is being done today.

Thank you.

[The statement of Mr. Soller follows:]

STATEMENT OF CARL R. SOLLER, ESQUIRE

I. INTRODUCTION

Good afternoon. My name is Carl Soller and I am a member of Soller, Singer & Horn, a law firm centered in New York City.

On behalf of the J.F.K. International Airport Customs Brokers Association and other importing interests, I salute and thank this Subcommittee for their interest in reviewing and suggesting amendments to the procedures used by the United States Customs Service in processing goods entering the United States.

My remarks here today before this Subcommittee are not designed to be an exhaustive litany of concerns had by the importing community over current Customs practices. Rather, my remarks are designed to highlight those areas of crucial concern where we in the importing community believe that changes must be made by Congress. Hopefully, by focusing on these areas of prime concern, we can begin to work toward creating an importing process that is fair, equitable, and beneficial to all. Unfortunately, the present attitude of many, if not most Customs officers is a reflection of the "Zero Tolerance" Program implemented by Customs to seize vehicles carrying drugs. This "Zero Tolerance" attitude pervades all of its activities when reviewing customs brokers' and importers' acts in regards to entry of merchandise. Customs "shoots from the hip" when making seizures and acts without first determining whether the importer was indeed culpable or even acted in a negligent fashion. Sadly, "Zero Tolerance" is not evident when Customs officers err. They have not been, and are not now being censured nor held accountable for their errors.

The United States Customs Service is charged with the responsibility for collection of duties exacted on goods entered into the Customs Territory of the United States. 19 USC, Section 3. And by virtue of this responsibility, the Customs Service is directed by Title 19 of the U.S. Code, and Title 19 of the Code of Federal Regulations with a myriad of responsibilities in carrying out these duties.

However, the purpose behind the statutory and regulatory schemes has all too often been overlooked by Customs in the carrying out of its responsibilities. Consequently, the individual importer and collectively the entire importing community, has suffered because of Customs' overzealous enforcement of its statutory and regulatory directives.

II. IMPROPER SEIZURES BY CUSTOMS

The use of 19 USC Section 1595a(c) by the Customs Service in enforcing the Customs laws is a prime, yet typical, example of good intentions gone awr;.

19 USC Section 1595a(c) states:

> Any merchandise that is introduced or attempted to be introduced into the United States contrary to law (other than in violation of Section 592) may be seized and forfeited.

This subsection (c) was added to the existing statute in 1986 by the Anti-Drug Abuse Act of 1986. It was in response to a national outcry against drugs and drug abuse, fueled by the tragic death of University of Maryland basketball star Len Bias, that prompted Congress to take only six weeks to pass Public Law 99-570, The Anti-Drug Abuse Act of 1986.

The purpose of the legislation, as stated in the preamble to the bill, was:

> An Act to strengthen efforts to encourage foreign cooperation in eradicating illicit drug crops and in halting international drug traffic, to improve enforcement of Federal drug laws and enhance interdiction of illicit drug shipments, to provide strong federal leadership in establishing effective drug abuse prevention and education programs, to expand Federal support for drug abuse treatment and rehabilitation efforts, and for other purposes.

The bill covered everything from criminal and civil penalties (Titles I - III) to reclamation of national forest areas being used to grow marijuana (Titles V and XV), as well as drug abuse among the American Indian population (Title VI(c)). The text, and the Senate debates, clearly illustrate the single-minded purpose of Congress and the President. They were mobilized by their concern over the "plague" of drug trafficking and drug abuse (statement of Senator Patrick Leahy of Vermont, Cong. Rec., Vol. 132, No. 129, S. 13757, Sept. 26, 1986).

There was no indication that Congress intended this legislation to apply to cars, jewelry not properly marked, textiles and other apparel that weigh more than their entry visas state, or other non-contraband. The bill was clearly aimed at drugs, which are prohibited merchandise, and not the above just listed examples of unharmful merchandise that have been seized under 19 USC Section 1595a(c) by the U.S. Customs Service.

A statutory provision should not be read in isolation, but should be viewed in the context of the entire statutory scheme. The Anti-Drug Abuse Act was a multi-faceted attack on drugs. As Senator Trible stated, "This sweeping measure attacks the plague of illicit drug trafficking and abuse on many fronts." Cong. Rec., Vol. 132, No. 132, S. 14286 (Sept. 30, 1986). It covered everything from drug crops grown in other countries to rehabilitation of drug addicts, and virtually everything drug-related in between. Senator Leahy stated that, "I believe this is the most comprehensive, hard-hitting anti-drug bill ever written." Cong. Rec., Vol. 132, No. 132, S. 14295 (Sept. 30, 1986).

That the new provision was aimed at imports of controlled substances is clearly demonstrated by the uses to which forfeiture revenues were directed. The Act amended 19 USC 1613a, the Customs Forfeiture Fund, to eliminate the cap in that account. The rationale was that:

> [SENATOR LEAHY]. Fighting drugs is expensive. The forfeiture amendments we passed two (2) years ago provide for the seizure and forfeiture of the profits of the drug trade and property used in connection with it: businesses, airplanes, and so forth. But under those laws, no more than $20 million of forfeited assets can be used to fund anti-drug programs. This bill removes that cap, and requires that all money remaining in the Customs and Justice Departments' forfeiture funds after paying administrative costs, be used to fund Federal and State drug programs for law enforcement, education, treatment, and rehabilitation. This program is expected to net $150 million in 1986, to help pay the cost of this bill. Cong. Rec., Vol. 132, No. 130, S. 14295 (Sept. 30, 1986).

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> [SENATOR WILSON]. It is necessary, Mr. President, as well as altogether fitting, that there is a certain poetic justice to using the ill-gotten gain of those [drug] traffickers in order to combat their illegal traffic. Cong. Rec., Vol. 132, No. 129, S. 13757 (Sept. 26, 1986).
>
> [SENATOR BIDEN]. As you know, at the end of each year, 90% of the unexpended and unobligated proceeds in the Justice and Customs forfeiture fund shall be transferred into a new special forfeiture fund. Proceeds in this special fund are to be used for drug control efforts at the Federal, state and local levels. In this way, seized and forfeited assets are to be used solely, so that, in effect, drug traffickers are subsidizing a major portion of the national drug control program. Cong. Rec., Vol. 132, No. 135, S. 14949 (Oct. 3, 1986) (Senator Biden was one of the leaders of the Democratic Task Force on Drug Abuse which drafted the legislation). [Emphasis added.]

The cap was eliminated to allow the profits from seizures under this Act to be used to fund the drug programs. The idea was to have drug traffickers pay for drug enforement and drug education. Congress intended that drug offenders, not legitimate commercial importers, bear the financial burden of combating the drug war.

Additionally, the supplemental funds the Customs Service received under the statute were earmarked for enforcement of the drug laws. 19 USC 2075(b), as amended.

Congress clearly did not draft 19 USC 1595a(c) to encompass violations of law concerning imported cars, entered weight being different from visa weight, or for mismarked jewelery. The legislation was enacted to combat drug trafficking, not to enhance already stringent and effectively enforced Customs entry laws or regulations. There is no mention of automobiles, textiles, jewelry imported or otherwise, in the legislative history. The "commodities" discussed are cocaine, heroin, angel-dust and designer drugs.

The U.S. Customs Service not only has been overzealous in its use of statutory provisions for the seizure of merchandise, but it has also been remiss in promptly, efficiently, and expeditiously resolving those seizure cases. Delays, delays and more delays are not uncommon, whether they be due to lost paperwork by Customs, or the reassignment by Customs of the individual responsible for the handling of the case with no provisions made or instructions left for the next Customs officer.

The net result of these frustrating bureaucratic snafus is the inability of the importer to proceed with his business, with resulting economic difficulties and lost profits. It is not uncommon for smaller importers to be driven into bankruptcy and out of business when these all too frequent delays and losses are visited upon them by Customs' bureaucratic and organizational ineptitude.

Importers are not the only parties concerned with the economic and legal consequences resulting from delays by Customs in quick and speedy resolutions of these seizure cases.

In Skiva International, Inc. v. United States, U.S.D. Ct., Civ. No. 87-3093 (D.N.J. Aug. 20, 1987), the Court found four and five-month delays unconstitutional, where Customs produced no evidence to support its theory of the case and its continued detention of $500,000 worth of the plaintiff's merchandise. The Court stated that:

> I think the Government has, to all appearances, had a theory which wasn't borne out and *you just can't tie up somebody's property like this indefinitely and not let them do something about it ... It's not fair. That's what's the problem*. (Transcript of Hearing, pp. 19, 35-36) [Emphasis added].

The Court ordered the goods, which also had been seized under 19 USC 1595a(c), released immediately.

Similarly, the Court in *Diwanchand Co. (N.Y.) Ltd. v. United States*, U.S.D. Ct., Civ. No. 87-667, (D.N.J. March 25, 1987), stated, regarding a seven-month hiatus:

> I think *the government's delay has been excessive, almost approaching the word unconscionable*, but not quite, and I think it should be compelled to move and can be ordered to do so in a proceeding in the nature of mandamus. (Transcript of Hearing, p. 53) [Emphasis added].
>
> Had you come a little earlier, I probably would have done the same thing. (Transcript of Hearing, pp. 51-52) [Emphasis added].

The result of the Court's action was the release of the merchandise. These cases show the emergence of a pattern since 1986, of Customs using 19 USC 1595a(c) to indiscriminately seize merchandise, no matter how big or how small the violation, and holding the case for months without so much as forwarding it to the U.S. Attorneys Office for prompt resolution, which the law requires.

Again, while these delays are vexatious to all importers, it is the small importer who often suffers the greatest consequence because their merchandise volume doesn't allow them to sustain these unforeseen delays and resultant loss of their customers; the small importer many times also cannot afford the fees needed to take Customs to Court. Delays, it should be emphasized, that are the result of Customs' failure to act.

The U.S. Customs Service is not without recourse should the Congress seek to limit the reach of 19 U.S.C. 1595a(c) to its original purpose - drug trafficking. If such limitations were enacted, Customs would be obliged to return to the pre - 1595a(c) statute of 19 U.S.C. Sec. 1592 for enforcement of claims against importers who entered merchandise not in conformity with statutory or regulatory provisions.

19 U.S. Sec. 1592 states in part:

> Without regard to whether the United States is or may be deprived of all or a portion of any lawful duty thereby, no person, by fraud, gross negligence, or negligence
>
> (A) may enter, introduce, or attempt to enter or introduce any merchandise into the Commerce of the United States by means of

(i) any document, written or oral statement, or act which is material and false, or

(ii) any omission which is material, or

(B) may aid or abet any other person to violate subparagraph (A).

This section was added to the existing 19 USC Sec. 1592 in 1978 to quell the protestations of importers and others who had been slapped with fixed fees regardless of their culpability or the seriousness of the violation. The 1978 amendment provided degrees of culpability relating the amount of the Customs penalty for false and material statements to Customs, to the culpability of the offender. "Existing section 592 [had] strongly [been] criticized by all segments of the importing public because it require[d] a fixed penalty regardless of the violation, lacks due process safeguards, and does not permit effective judicial review." (Report on Customs Procedure Reform and Simplification Act of 1978, 1978 U.S. Code Cong. and Adm. News, pp. 2213).

It is 19 U.S.C. 1592 and its attendant provisions Customs should be utilizing when goods are entered that are not in conformity with statutory or regulatory provisions, and not by bastardizing the provisions of 19 USC 1595a(c) to reach non-contraband importations.

19 U.S.C. 1592 is specifically designed to deter the types of violations currently being redressed by Customs' reliance on 19 U.S.C. 1595a(c); inaccurate descriptions of goods, cases where entered weight differs from visa weight, etc. "Section 592 is the most frequently invoked Customs penalty. It is intended to encourage accurate completion of the entry documents upon which Customs must rely to assess duties and administer other Customs laws." (Report on Customs Procedure Reform and Simplification Act of 1978, 1978 U.S. Code Cong. and Adm. News, pp. 2229).

But, as Michael Lane, Deputy Commissioner of Customs for commercial operations, responded when questioned by the National Customs Brokers & Forwarders Association on the use of 1595a(c) over 592, "Mr. Lane responded that the 592 provision has proven to be ineffective. Importers simply look at the fines as a cost of doing business, and continue 'flagranting violating the law.' By contrast, seizures under 1595a(c) result in immediate cessation of such activities." (Journal of Commerce, March 14, 1988).

Deputy Commissioner Lane's comments typify the response and attitude of Customs in dealing with importers who enter goods not in conformity with rule or regulation; seize now, ask questions later. Moreover, Customs position, as attributed to Mr. Lane, demonstrates Customs eager willingness to seize on any statutory provision, despite its intended purpose, for resolution of cases where there is question as to the correctness and appropriateness of the entry.

Such abuse and heavy-handedness must cease.

III. CUSTOMS INEQUITABLE IMMUNITY FROM THE FEDERAL TORT CLAIMS ACT

With the rise in imports into the U.S. over the last decade, importers, both large and small, public and private, are experiencing an ever increasing level of damage to their merchandise while in the custody and control of Customs.

Perishable items, such as foodstuffs, textiles, jewelry, and a whole host of other items have cost importers millions of dollars when their goods have been tampered with, damaged or destroyed while in Customs possession. Heretofore, Customs has been immune from collective liability by the provisos of the Federal Tort Claims Act. Such immunity can no longer be tolerated, and this honorable subcommittee is requested to recommended to the House of Representatives legislation to eliminate this exemption.

The Federal Tort Claims Act, codified in 18 U.S.C. Sec. 1346(b), *et seq*, allows the people to file and maintain actions against the Federal government for the tortious conduct of its agents or employees. This statutory exception to the doctrine of sovereign immunity is limited in its application to the U.S. Customs Service by 28 U.S.C. Sec. 2680(c).

28 U.S.C. Sec. 2680(c) provides that claims under the Federal Tort Claims Act shall not apply to:

> Any claim arising in respect of the assessment or collection of any tax or Customs duty, or the detention of any goods or merchandise by any officer of Customs or excise or any other law enforcement officer.

Any claims against Customs now must be brought in reliance on the common-law theory that a property owner had a right to bring a suit against an individual Customs official who negligently damaged his goods. As the Supreme Court noted when discussing this recovery theory, "... there are significant limitations to the common-law remedy, the most important of which is the apparent requirement that the plaintiff prove negligence on the part of a particular Customs official. *Such proof will often be difficult to come by*". *Kosak* v. *United States*, 465 U.S. 848, 860-61, (emphasis added).

Clearly, when the importer often has no idea who is "handling" his case on behalf of the Customs Service, his knowledge of who the specific individual is responsible for the negligent handling of his merchandise will be non-existant. The result? Importers who are forced to rely solely on the common-law recovery theory will effectively be precluded from maintaining a successful action unless they are able to prove both who the responsible individual is, and his concomitant negligence.

In 1984, the Supreme Court addressed the immunity of the Customs Service from suit under the Federal Tort Claims Act in the case of *Kosak* v. *United States*, 465 U.S. 848 (1984). In that case, a U.S. serviceman's collection of Oriental art was seized by Customs when he was suspected of smuggling the collection into the country from Guam. After being acquitted of the smuggling charge, the seized merchandise was returned to him by the Customs Service in damaged condition. The importer then filed an administrative claim with the Customs Service, and on its denial filed an action against Customs under the Federal Tort Claims Act.

In a decision by the U.S. Supreme Court, Justice Thurgood Marshall recognized the inequities in the statutory exemption for Customs from the Federal Tort Claim Act, stating:

> Petitioner and some commentators argue that Section 2680(c) should not be construed in a fashion that

> denies an effectual remedy to many persons whose property is damaged through the tortious conduct of Customs officials. That contention has force, but it is properly addressed to Congress, not to this Court. Kosak v. United States, 465 U.S. 848, 862 (1984) (Emphasis added).

The Court recognized that it was inequitable and unfair for the Customs Service to be immune from suit for its tortious conduct, but was nevertheless unable to circumvent the explicit statutory language and nullify or limit the exception. It was Congress, the court stated, that should resolve this unfair situation.

Customs exemption from liability from the Federal Tort Claims Act is a direct contributing factor in its arbitrary and capricious manner in dealing with seizure cases. All reason and rationale for expeditious processing of these cases, and for Customs to exercise care in the handling of seized merchandise, is lost if Customs is not responsible for damage or loss caused by or attributed to them. Naturally, if Customs is required to compensate importers for loss or damage of seized merchandise, if they face the risks borne by their lack of care, they will be more judicious in their handling of goods not their own. As the situation stands now, however, Customs can and often does proceed in a cavalier manner knowing they are immune from any suit or cause of action.

IV. PREFERENTIAL TREATMENT OF EXPRESS COURIERS

For at least the past eight years, the Customs brokers doing business in the United States have had to cope with an ever widening disparity between the way Customs treats Customs brokers and the way it treats the courier, express delivery and door-to-door delivery services ("couriers"). While Customs has continued to require the brokers to observe all of the statutory and regulatory requirements, as it should, it has adopted an extreme laissez faire attitude toward the couriers. This has resulted in significant loss of business for the Customs brokers and a rapidly increasing portion of imports entering the United States without proper inspection or regulation. Customs' abdication of its authority with respect to the couriers is not only discrimination by Customs of one segment of the importing community in favor of another, but also, it is an abandonment of the protection of the U.S. brokers and revenues which the Customs Service was created to do.

Eight years of continuous appeal to both the Customs Service directly and to Congress have been to no avail. Customs has steadfastly refused to acknowledge that its special relationship with the couriers is discriminatory, or even exists! While members of Congress have made sincere attempts to respond to the concerns of their constituents, Customs has managed to evade or ignore their intervention and refused to alter its policy. The only solution to this very large problem is legislation which will force Customs by Congressional mandate to address and remedy the problem.

One of the two large areas of the courier problem is who has the right to make entry for shipments which are consolidated upon arrival in the United States. Section 484 of the Tariff Act, 19 USC 1484, provides that:

> When an entry of merchandise is made within this section, the required documentation shall be filed either by the owner or purchaser of the merchandise

> or, when appropriately designated by the owner, purchaser or consignee of their merchandise, a person holding a valid license under Section 1641 of this title. (19 USC 1484(a)(1)(c)).

Astoundingly, Customs has interpreted this statute to allow the carrier to be designated as the consignee for the purposes of making entry. Customs has refused to acknowledge that the plain language of the statute does not allow carriers or shippers to designate the consignee. See, e.g. Letter from Michael Lane, Acting Commissioner of Customs to Abe M. Knipper of August 24, 1987.

Customs erroneous interpretation of this statute has manifested itself on three different occasions when Customs has proposed regulations to implement section 1484. Each proposal has exempted the couriers from the restrictions on the right to make entry. In the face of strong and vociferous protests that the couriers must not be exempt, each of the proposals has been withdrawn. Unfortunately the withdrawals have not deterred Customs from the practice of allowing couriers to be exempt from the requirements of section 1484.

Customs reasons for special treatment of the couriers with respect to who has the right to make entry only can be inferred. With the only restrictions on cargo being size and weight, the couriers can and do carry every conceivable kind of merchandise. Much of this merchandise requires formal entry documentation and often requires payment of duties. Yet, standard Customs clearance procedure for the couriers is presentation of a master airwaybill which does not reveal the exact nature or value of the individual merchandise being cleared.

Drugs and contraband flow freely into the United States courtesy of the couriers fast and efficient door-to-door service. Merchandise on which duty is owing enter without inspection, and it is the government which loses the revenue; while law abiding importers, who use customs brokers and traditional carriers, have their goods held up because of petty violations. The courier business has given a whole new definition to the phrase "free trade".

A prime example of goods entering the U.S. by couriers without Customs inspection include gold jewelry which value was misdeclared by the courier-designated-broker so that duty would not have to be paid. When the actual importer alerted Customs to this mistake, Customs failed to respond in any way. In another case, the courier-designated-broker mutilated a shipment of textile samples to effect entry. The only problem was that upon delivery to the importer, the samples were useless. No action was taken against the courier or its broker. In another case, five separate entries for the same importer were erroneously prepared by captive broker on contract to a courier. When the errors were discovered, Customs reaction was to launch a fraud investigation against the importer. The courier and the broker were held blameless.

It must be understood that in the way the couriers operate, the importers have no way of knowing when or where their goods will arrive. The couriers steadfastly refuse to obey written instructions from importers that the importers be notified of the arrival of shipments and allowed to appoint their own broker. This practice absolutely violates section 1484, but Customs will not act.

The number of documented incidents where merchandise should have been subjected to Customs inspection, but was not because it entered the U.S. by courier, is extremely large. At a time when public concern is at a peak over the flood of imports into the U.S., the awesome federal deficit and devasting effect of drugs on this country; it is unconscionable that the Customs Service is allowed to abandon enforcement of a prime conduit of these problems. Effective regulation of the entries made by the courier would impede the free flow of drugs into the country, improve revenue collection and the implementation of other national trade policies. Customs must be directed to face the courier issue squarely, and that direction must come from Congress.

Nowhere is Customs complete and willful ignorance of courier business operations more obvious than the proposed regulations for the courier industry. See Fed. Reg., Vol 52:47729, Dec. 16, 1987. "Procedures for Clearance of Cargo Carried by Express Consignment Operators or Carriers". Although the topics covered in the proposed rules appear to address the issues raised over the years, three basic problems remain: as regarding couriers, the expedited clearance procedures effectively negate standing law on the entry of merchandise into the United States; the new regulations enormously increase the likelihood that merchandise will be misclassified, undervalued, or improperly released; and, while claiming to do the opposite, the new regulations raise the barriers to entry so that only those who are now couriers will be able to qualify for treatment under the new regulations. As the comment submitted by the National Customs Brokers and Forwarders Association of America so eloquently stated, the proposed regulations "do not 'address' the special needs of the express carrier industry as much as they pander to them (sic)."

Customs' stance toward the couriers, as typified by the proposed regulations, begs an attitude by the couriers in their advertising campaigns of effectivley by-passing Customs. Throughout the entire U.S., businesses, both legal and otherwise, are being shown couriers zipping through Customs while goods being entered by brokers languish under oafish and slow inspection. When the JFK Brokers Association took out an ad depicting the courtesies Customs grants to the couriers, Commissioner van Raab felt obliged to chastise the brokers for ridiculing Customs and impugning its motives.

In sum, the situation of the couriers acting as de facto brokers of merchandise into the United States has become a crisis with the only adequate remedy being a radical shift in current practices. Customs will not cure the problem for itself; that has been made clear over the preceeding eight years. Now it is for Congress to respond.

Couriers must be brought within the express jurisdiction of the Customs laws and regulations. Customs must restrict itself or redeploy its personnel so that the couriers be properly regulated. Finally, some measure of accountability such as an administrative tribunal overseeing importing practices, must be imposed on Customs. Unless Customs has an incentive to act constructively with the importing community, it will prefer the far easier and ultimately effective practice of ignoring problems.

Many of the problems with Customs proposed courier regulations could be avoided if Customs complied with the clear requirements of the Regulatory Flexibility Act. That act requires all government agencies to prepare a regulatory impact analysis of the proposed regulations if the agency determines that the regulations will have a "significant economic impact on a large number of small business entities." If the agency makes a negative determination on the impact of the regulations, it is required to give a reason for doing so. Despite the statutory requirements, and despite Customs never having made an affirmative determination, Customs has never given a reason for its continuous negative responses on the impact of express couriers on small Cutsoms brokers.

Because the vast majority of Customs brokers are small business as defined by the Small Business Act, and by their very nature and purpose, Customs regulations affect Customs brokers in some way, it is impossible that not one proposed regulation required a regulatory impact analysis. It violates the Regulatory Flexibility Act to fail to give even a cursory reason for a negative determination. Both commentators and members of Congress have asked that Customs do an analysis on various proposals. When brought to his attention, the Chief Counsel for Advocacy of the Small Business Administration requested a regulatory impact analysis for proposed express carrier regulations and suggested that the proposal be suspended until the analysis was completed. As of this date, Customs has not responded to the SBA's letter. An attorney in the Chief Counsel's office explained that compliance or even attention to the Regulatory Flexibility Act is, in practice, voluntary. Some government agencies make good faith efforts to comply. Others, notably Customs, just ignore the law.

While perhaps beyond the immediate purview of the Oversight Subcommittee, giving the Chief Counsel for Advocacy at the SBA more enforcement power under the Regulatory Flexibility Act could alleviate many of the problems caused by Customs' willful ignorance of the laws' requirements. Moreover, substantive determinations as to the necessity of impact analyses by Customs would provide a degree of restraint and consideration in its actions so remarkably lacking at Customs, and clearly intended by the Act.

Based on the foregoing, it is abundantly clear the Customs Service operations on processing goods entering the United States is deficient and in need of remedial help. Specifically, it is imperative that this Subcommittee recommend measures limiting Customs' irregular use of a statute intended for drug trafficking in seizing non-contraband merchandise; that Customs be instructed to rely on 19 USC Section 1592 in dealing with non-conforming entered merchandise; that the exemption for Customs under the Federal Tort claims Act be eliminated; and that the courier services be brought within Customs' statutory framework.

At this stage in Customs' operational procedures, only a direct response by Congress in the form of continuing Congressional oversight can hope to remedy the aforementioned problem. No stop-gap, quick-fix or other short terms solutions can remedy the above listed insidious problems. Customs needs the continuing presence of an oversight body in order to move toward creating an importing process that is fair, equitable, and benefical to all.

Respectfully submitted,

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Chairman PICKLE. Mr. Soller, I am glad that this hearing has lasted as long as it has, and not necessarily that you are the last witness. But you have made some strong statements that our committee needs to hear.

I appreciate that you would be that forthright, and I appreciate the comments and suggestions that each of the witnesses have made.

I do not think that we are happy about imposing the threat of an investigation on Customs, because it is more of a review than it is an investigation. I would hope that Customs would be here.

Do we have a representative of Customs here making notes or hearing this testimony? Do we have somebody representing Customs here?

STAFF. They were here and they left.

Chairman PICKLE. And they're gone? Well, they left one panel too soon. But no matter, I will see that they get a copy of this, because these are strong statements that you have made. But I am glad that I was here to hear them, and I can assure you that we will go through your statements and suggestions.

Now, I know the hour is late, but let me ask just two or three questions.

One, I will start with you, Mr. Rowan. You had suggested that your main concern was in the area of drawbacks.

Mr. ROWAN. Yes, that is correct.

Chairman PICKLE. I do not know exactly just what a drawback is, and you mentioned it is in some areas like orange juice and oil. I have got a little more oil down in my State than I have orange juice, so let us take oil.

Give me an example of how the drawback works, and how it is not working, and why it is probably more difficult to have it than for whatever benefits it might get.

Give me an example. Trace me a product. Can you do it just very briefly.

Mr. ROWAN. Well, to give you an example with regard to oil, you will find that on exports of oil, overseas, the profit margins may be half a penny per gallon. And so the ability to——

Chairman PICKLE. Well, I want to back you up now. You say it is a profit of half a cent a gallon. Are you talking about crude oil that comes in to this country?

Mr. ROWAN. Well, let me give you an example. For instance, some of our clients will import what we call blend stocks. And blend stocks, there is a blending process to make the finished product of gasoline.

And when the blend stocks are brought into the United States with the intention of blending a finished product of gasoline for export, we run into numerous problems at the Customs Service in terms of issues such as definition of a blend stock.

The definition exists. It is at the Customs Service. It shouldn't be open to question. But we wind up having Customs officials asking us to provide molecular analyses of the blend stocks that we bring in that our clients import, and denying, or wanting to deny the drawback application because of some inconsequential and absolutely ludicrous nitpicking little issue.

We have situations where blend stocks are brought in and are put into public holding tanks before blending. The Customs Service wants to prove that the blend stocks that were brought in are the same blend stocks that go into the finished product and go out of the country.

We have run into a problem of the Customs Service arguing with us that because these are public holding tanks, and there may have been some residue somewhere down in the bottom of these tanks, that there is at least a theoretical—they can't prove that it's actual, but they say that there's a theoretical possibility that there has been some commingling between domestic product and imported product.

And therefore, they will have to deny us our drawback application, because they can't be certain that the goods that were imported and duties were paid on are the same products that are exported.

And that is absolutely ludicrous. Because there is a theoretical possibility that a comet is going to hit this building this evening, but I think we can all agree that it is not something that we should be worried about when the issue at hand is to maximize American manufacturing and job creation on our shores.

But that is the attitude that pervades the drawback program at Customs. And they don't seem to have any sense of what the program exists for, and they seem to run it in a manner that is guaranteed to produce failure.

Chairman PICKLE. Are there any workable remedies in the expediting of refunds in this area?

Mr. ROWAN. Well, there are programs on the books for accelerated payment. However, with regard to certain drawback programs, you have to have established a track record with the region that you are dealing with.

And depending on what the region is and who happens to be sitting at the desk when you walk in the door, your track record may be sufficient or it may not be sufficient.

With regard to other types of drawback programs, you can get accelerated payment after having a rigorous review of your initial drawback application, which in some cases takes more than a year.

The accelerated payment provisions say that Customs will pay within 3 weeks of your request. But what that really amounts to is 3 weeks after you fought the battle, which may take over 1 year.

So in essence, there is no working provision for accelerated payment.

Chairman PICKLE. All right. Now, Mr. Sandler, you had testified that I guess you were really more concerned about the delays and the time that was consumed, and the forms you had to fill out.

Have you got any suggestion as to how we remedy that?

Mr. SANDLER. The timeliness of the forms that are to be filled out by the importer? The timeliness issue that I raised was the reverse of one of the issues that has been raised by others. There is an area where I feel the Customs Service has not been aggressive enough to give information out to the import community about slippage in compliance with the law.

They do not timely give out notices of liquidated damages.

Chairman PICKLE. As a Customs law practitioner, and I guess that is primarily what all of you are, are you aware of any other problems with Customs that we should know about? Have you got anything—I don't think I will ask Mr. Soller that any more, because he has already unloaded.

Have you got any other suggestions?

Mr. SANDLER. There are a lot of suggestions, and the hour is late for that. I have singled out five that were ones that I felt were particularly well suited for consideration by the committee.

The basic theme of enforcement activities, emphasized to the point where you are being harmful to the commercial side, is a common thread.

In Miami, the Caribbean Basin Initiative is an extremely important incentive.

Chairman PICKLE. I am sorry, I did not hear your last point.

Mr. SANDLER. The Caribbean Basin Initiative, is a duty-free access program, which involves Caribbean products coming into the U.S. marketplace. It is a particularly important program to south Florida, because we are a major access point for that merchandise.

It is the strong enforcement mentality of the Customs Service, which seizes upon those programs and makes it so very, very difficult to take advantage of the incentives that the Congress created.

Those types of examples exist up and down the line. The 807(a) program which the President proposed, is a guaranteed access level for wearing apparel, for Caribbean nations that negotiate an agreement. The Customs Service placed its computer by this program in New Orleans where very few entries are filed. Almost all of them are made in Miami.

Under that system, because of the change in time zones, there are only about three hours a day in which the computer in New Orleans can communicate with the importer in Miami. We cut our day less than in half, in terms of what the Customs Service could do in a computerized environment.

It took 6 months to get Customs to realize that the computer should be in Miami. It took another 6 months to get the computer moved from New Orleans to Miami.

Those types of examples, I know that you have heard a lot of them today. Yes, we could certainly come up with an awful lot more of them.

The problem, the general problem, is one of taking a serious look at the commercial side and making a commitment to supplying the resources and the intelligence to give effect to the laws of this country that permit trade on a fair and reasonable and economic and efficient basis, and to take a look at the enforcement side and to make intelligent decisions there.

Customs decides that Operation Ozone is a good way to stop fluorocarbons from coming into the country. Do they become selective? Nope. Hundred percent examination. They take three samples of every propellant perfume that comes into the Port of Miami. They have so many samples at the port that they can't find the samples of the stuff that they ought to be testing. They're losing the samples; they're not even testing them. They are also delaying an enormous number of shipments.

It is overaggressive, overzealous enforcement of those laws under all the programs and all the initiatives they come up with. We need oversight—complete oversight—to try to intelligently implement the trade laws that are designed to benefit legitimate businesses.

Mr. SOLLER. Mr. Pickle?

Chairman PICKLE. Yes.

Mr. SOLLER. If I may for just 1 minute, one of the things that I did not—that is in my written comments that I think would go far in changing Customs' attitude, and there was an invitation in fact by Justice Thurgood Marshall of the Supreme Court in deciding the case of *Kosak* v. *United States*, is the exception to Customs being responsible to the importer under the Federal tort claims act.

In that decision, Thurgood Marshall said, when there is argument that if Customs is involved in tortious conduct, that the injured party should be recompensed, Justice Marshall said that there is force to that argument, but unfortunately, it is being made to the wrong entity. Current legislation precludes the Supreme Court from awarding an importer money if he is damaged as a result of Customs' tortious action, and invited legislation.

And I would ask that this committee, after reviewing our written testimony, take a look at that legislation, because I think that if Customs feels that it is responsible for frivolous activities and unjustifiable seizures, perhaps they will stop.

Chairman PICKLE. Well, we will take that under consideration, and you may have a good point on it.

Let me recognize Mr. Frenzel, and we will come back to your questions. But before I do that, you say we ought not to keep Customs under Treasury. Where would you put it?

Mr. SOLLER. No, no, I said Customs should not be the chief law enforcement agency for drug interdiction.

Chairman PICKLE. You are not suggesting we move Customs out of Treasury?

Mr. SOLLER. No, I'm suggesting we move drug enforcement out of Customs.

Chairman PICKLE. I see, thank you. Mr. Frenzel.

Mr. FRENZEL. Thank you Mr. Chairman.

Ladies and gentlemen, it is late, and we thank you for your good counsel. We appreciate the fact that all of you have been in the business a long time and developed a lot of experience. We are grateful that you are willing to share it with us.

One of the suggestions made earlier in the day, perhaps before you were here, was that as required by law, the Customs department is trying to put together an advisory committee.

It seems to me the IRS has used such a device rather effectively, not only at the national level, but also at the district level. So I'm wondering if you believe this is something that can be fruitful for the future.

Is that the right direction to go? Mr. Wegener?

Mr. WEGENER. I think it is. In fact, I have personally made application to serve on that Commission. We have to keep one thing in mind on that Commission: We can't let Customs be in control of it. The previous one was put together to oversee the user fee. Customs was in charge of the committee and they would run the meeting. If it didn't go their way, they would just close the meeting.

I think we need a rotating chairman of that committee and that committee should not be chaired by Customs constantly. But it is a good idea; it is a way we can sit down to talk things over.

And, by way of further comment, I don't think we have to have legislation. We don't necessarily need another Customs simplification act. We have just got to get back to the basics. We need to get good commodities specialists. Let us get enforcement separated from compliance. Draw a line. Let us have this looked at very hard. Get rid of rewarding promotions based on an agents number of seizures or other impediments to international commerce.

Mr. FRENZEL. Thank you. Is Customs Service proceeding apace at getting this advisory system worked up?

Mr. WEGENER. The Federal Register comment period is closed now. There were several of us that put our names in. And now the committee must be chosen. I don't know what the timeframe is for coming back and choosing that committee.

Mr. FRENZEL. Thank you. Mr. Sandler, do you have a thought on that?

Mr. WEGENER. Excuse me, Mr. Frenzel, it could take as long as 1 year, I have been informed, for them to put that committee together.

Mr. FRENZEL. It seems to be faster than they give drawback refunds.

Mr. SANDLER. I agree with what Mr. Wegener said. This committee as I understand is a committee that is chaired by the Department of Treasury that oversees Customs, and not by Customs itself. I think it is very critical, that it be an oversight committee, as this one is, over the Customs Service, and not a Customs Service activity itself.

That is the first I had heard, that it will take 1 year to put the committee together; that is not good news. I would hope that there would be a committee in place very soon, and that it be a committee that is truly representative of the types of businesses that deal with the Customs Service and the geographic regions as they are represented in dealing with the Customs Service.

Mr. FRENZEL. Thank you very much. Mr. Soller, when you were talking about the Customs Service not being the right agency to lead the charge against drugs with weapons drawn, you were preaching to the choir as far as I was concerned.

We are not going to be able to change that. Congress for the moment believes that everybody in the world is in the drug war, each marching in a different direction, of course. We are not going to modify that very much.

I believe the best we can do is to make sure that the Customs agency is required to keep its eye on the ball so it does not allow the commercial function to deteriorate completely, while it continues to derive some solace and extra employees for its drug mission.

I hope that you will help us with specific recommendations not to dismantle the antidrug jurisdiction, but to try to get them refocused at least to some extent, so that they give equal weight, not disproportionate weight, to the two functions.

Mr. SOLLER. Well, the reason that I suggested it was not for any philosophical bent, but merely for recognition, and I don't think other experts disagree, that there just isn't the expertise in the Customs Service from the top down to properly implement the drug interdiction program.

With someone at the top of the Customs Service, and with the proper employees, I don't see why Customs couldn't do that job. I just don't think they're qualified.

I am not saying they should not be involved in it. They just should not be the guiding force which was the deal worked out by the Attorney General and the other law enforcement agencies.

Mr. FRENZEL. Thank you. Mr. Rowan, I appreciate your testimony on drawback. It is an obscure portion of law, and you don't labor with a lot of help in that area. If Customs continues to handle it the way it has, maybe nobody will labor in that area for much longer.

Mr. ROWAN. I'm afraid you may be right.

Mr. FRENZEL. But it is something that needs our attention, and I think your comments were well directed.

Did you ever reside in the pleasant hamlet of Golden Valley, Minn.?

Mr. ROWAN. I certainly did; 6935 Glenwood Avenue.

Mr. FRENZEL. Wonderful. You were a near neighbor. He left town slightly before I did, Mr. Chairman.

Again, this is an extraordinarily experienced and talented panel, and we really appreciate your help. We could ask questions forever, but our staff has to eat supper, and I therefore yield my time, Mr. Chairman.

Chairman PICKLE. Before we adjourn, let me ask you, Mr. Wegener, I notice that you are the only witness here today who conducts business on the gulf coast. You have cited some horror stories or reservations in the area of——

Mr. WEGENER. Of Atlanta in the testimony.

Chairman PICKLE [continuing]. Of CESs and so on, automation. Have the problems that have been related here by you and others, are they also the same problems on the gulf coast? Do they have the same troubles?

Mr. WEGENER. Unfortunately, yes, sir, they are, to different degrees, depending on the activity. Mobile is less impacted than New Orleans. New Orleans is not as severely impacted as Houston.

But it depends on the quantity of vessels arriving, the type of merchandise arriving, and the attitude of the Customs people down there.

I don't think that outlining a litany of the horror stories is really our objective here. We are interested in the management of Customs, to see that the Service is properly and reasonably managed.

Yes, the gulf coast is experiencing the same problems. In fact, I would go back a few years, when Customs were inspecting everything, 8 years, 10 years ago. We could move cargo a lot quicker than we can now in the CES environment.

Now it is a question of the quality of examination. Customs has made some bad tendencies, and I have a personal problem with them. I think a lot of the examinations are done to make work, instead of being instituted for enforcement or informative reasons. I think that has caused some problems in Customs, which include infighting between the commodity specialist and the Customs inspector.

Some of the makework projects that have developed are harmful for Customs in its overall enforcement procedures.

In closing, and I'm glad I got to have one more opportunity to comment on this, Mr. Soller mentioned that he felt it was not time to simply throw more Customs employees into the system. I feel the same way.

I have quit putting my company name or my personal name on any complaints that we need more Customs inspectors; we don't. We need better utilization of what we have there, better trained inspectors, and better utilization of the computer system.

I think the computer system is a savior for Customs if it's used properly. That is what they have got to work on and get down. And, that results from good management and good direction, for not only the top man, but the people who are the deputies and the assistant deputies and have to go in there and get involved in the commercial end of it instead of the enforcement end of it.

Chairman PICKLE. I understand that Customs, almost annually, does not request additional personnel, or on occasion, has turned back money saying they didn't need all of that.

Am I correct on that essentially? At least they have not asked for extra help or more trained persons. In saying that, it sounds like they just want to kind of dry up and keep a real small staff, and I don't mean to imply that, because I don't know what they intend.

But it would seem to me that if they need more personnel, and more trained personnel, that they ought to ask for it. Now we may run into the same problem always, that they want it, but they won't ask for it. And if it's not in the President's budget, they will say no. We will get by, and they will get by, but that is not really doing the job if we need to do it.

We found the same is true with respect to the IRS. We are doing better in the IRS. They are getting more personnel, and they are, I think, giving more taxpayer services. Maybe we ought to have a trade services specialist in this Customs.

But we don't know what we are going to try to recommend, if anything. We have been asked to look into this issue, and I think that this is the first time that this committee has looked into the broad field of Customs.

As Mr. Frenzel said, you have been a very talented, experienced and helpful panel, and that has been true particularly of the inspectors. I see some of the inspectors are still here, and have stayed around for the last 7 or 8 hours to complete their statement. I think that is helpful to us, and it gives us the feeling that we ought to look further into this.

Now this is the first of a series of this kind of hearing. We have made one site visit. We are going to other ports, and we are going to look as best we can into a lot of these areas.

And we are not just going to do what one of you gentlemen said, and write a letter and say, answer these questions. We have got people going into the field and walking in and saying, how are you doing, and let me see.

I think that it will be helpful to see firsthand. We have a lot to learn, and we hope that we can continue this on a regular basis.

So I thank you very much for your participation. If there are no other questions, then the committee will stand adjourned.

[Whereupon, at 6:04 p.m. the subcommittee adjourned.]

REVIEW OF U.S. CUSTOMS SERVICE OPERATIONS

TUESDAY, AUGUST 9, 1988

House of Representatives,
Committee on Ways and Means,
Subcommittee on Oversight,
Washington, DC.

The subcommittee met, pursuant to call, at 9 a.m., in room 1100, Longworth House Office Building, Hon. J.J. Pickle (chairman of the subcommittee) presiding.

[The press release announcing the hearing follows:]

FOR IMMEDIATE RELEASE
WEDNESDAY, AUGUST 3, 1988

PRESS RELEASE #25
SUBCOMMITTEE ON OVERSIGHT
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
1105 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, D. C. 20515
TELEPHONE: (202) 225-5522

THE HONORABLE J. J. PICKLE (D., TEXAS), CHAIRMAN, SUBCOMMITTEE ON OVERSIGHT, COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES, ANNOUNCES THE SECOND IN A SERIES OF HEARINGS TO REVIEW THE U.S. CUSTOMS SERVICE

The Honorable J. J. Pickle (D., Texas), Chairman of the Subcommittee on Oversight, Committee on Ways and Means, U.S. House of Representatives, announced today that the Subcommittee will hold its second investigative hearing this year to review the overall operations and activities of the U.S. Customs Service. The Subcommittee is currently conducting a comprehensive review of the U.S. Customs Service (Customs) and plans to provide a report with recommendations to the full Committee on Ways and Means and the Subcommittee on Trade early next year. The purpose and scope of the Subcommittee's review was outlined in Press Release #20, dated June 3, 1988.

The hearing has been scheduled for Tuesday, August 9, 1988, beginning at 9:00 a.m., in the main Committee hearing room, 1100 Longworth House Office Building. The Subcommittee will receive testimony from both invited witnesses and those who have already requested to be heard.

The hearing will focus on complaints expressed by the trade community regarding Customs' operations and practices in the following areas: use of discretionary authority; implementation of automated systems; and, the consequences to the importing community of inadequate and non-uniform services. The Subcommittee will receive testimony from representatives of international transportation carriers, courier services, port authorities, and other organizations performing support functions for the international trade community, including a foreign trade zone representative and customs practitioners. Representatives of domestic industries affected by enforcement of the U.S. trade laws will also appear. In a hearing tentatively scheduled for September, 1988, the Subcommittee intends to receive testimony from the Commissioner of the U.S. Customs Service.

In announcing the hearing, Chairman Pickle stated: "At our first hearing on Customs, we received some very alarming testimony from importers and exporters and several senior Customs inspectors. I am concerned about Customs' relationship with the international trade community, how Customs exercises its authority, and the adequacy of services provided by Customs.

Our investigation, and testimony from our previous hearing, also indicate that there may be some serious problems in both the design and implementation of Customs automated systems. In order to offer adequate services to the trade community and restore lost confidence in Customs, these systems must work properly. In fact, the free flow of trade across our borders, to a large degree, depends on it. We will continue taking a hard look at these automated systems."

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Those wishing to submit written comments for the printed record of the hearings should submit six (6) copies by the close of business, Friday, October 28, 1988, to Robert J. Leonard, Chief Counsel, Committee on Ways and Means, U.S. House of Representaives, room 1102 Longworth House Office Building, Washington, D. C. 20515.

(MORE)

SEE FORMATTING REQUIREMENTS BELOW:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be typed in single space on legal-size paper and may not exceed a total of 10 pages.
2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.
3. Statements must contain the name and capacity in which the witness will appear or, for written comments, the name and capacity of the person submitting the statement, as well as any clients or persons, or any organization for whom the witness appears or for whom the statement is submitted.
4. A supplemental sheet must accompany each statement listing the name, full address, a telephone number where the witness or the designated representative may be reached and a topical outline or summary of the comments and recommendations in the full statement. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press and public during the course of a public hearing may be submitted in other forms.

Chairman Pickle. We will ask the subcommittee to please come to order and ask our guests to take their seats.

Today the Subcommittee on Oversight continues with the second, in a series of hearings, on the overall operations of the U.S. Customs Service. Since November of 1987, this subcommittee has been investigating the overall operations of Customs on a nationwide basis. This has required that we carefully study, for example: How Customs operates at the borders; how Customs examines cargo at points-of-entry; what authority is given to Customs inspectors and other personnel; how Customs selects locations for and staffs their facilities; whether current levels of staffing and training of Customs personnel are adequate; whether computer systems and automated processes developed by Customs are efficient; and, how all of these various aspects of Customs operations affect the international trade community, at large, and the free flow of trade across our borders.

After completing our initial background investigation, we visited the Port of Miami and the Miami International Airport. We saw for ourselves, Customs operations at the front lines—the point where passengers and cargo are actually processed by Customs. We plan to do more site visits, at various port facilities throughout the country, to better understand day-to-day Customs operations and the problems that exist at the different ports.

The subcommittee's first oversight hearing on Customs was held on June 9, 1988. At that hearing, we heard stories from the trade community of harassment, abuse and inconsistent treatment by Customs. Perhaps of even more concern was the testimony that we received from four senior inspectors of the Customs Service. They gave us examples of mismanagement, low morale, lack of training, equipment shortages, and serious flaws in the Customs automated commercial system. Unfortunately, it appears that many aspects of Customs commercial operations are in serious need of close scrutiny by this subcommittee.

Today, we are continuing our examination of Customs operations. We will hear from the trade community including representatives of ocean and air carriers, seaports, airports, foreign trade zones, customs practitioners, and sureties. We will also hear from representatives from domestic industry.

To properly oversee Customs, we need to know exactly how Customs responds to the demands placed upon its operations—particularly in light of this country's constantly changing trade environment. I emphasize again that timely and fair processing of cargo, consistent and fair treatment of importers, and effective administration of the trade laws by Customs are important, if not essential, to the smooth operation of international trade.

Another subcommittee Customs hearing this year will be held in September. At that hearing, the subcommittee will receive testimony from the Commissioner of the U.S. Customs Service and his senior staff. This hearing will serve to insure that we have received balanced points of view—both sides of the story—during this first segment of the subcommittee's investigation.

We have a distinguished list of witnesses scheduled for today. Thank you for coming. We are pleased to have all of your testimony.

I want to ask Congressman Schulze if he has an opening statement.

Mr. SCHULZE. I am pleased to join you in this hearing. Our first hearing on June 9 revealed serious flaws in the commercial operations of the Customs Service. Importers, practitioners, and inspectors gave us first-hand experience of how the system really works, and regrettably in too many cases does not work.

We have heard about inconsistent and nitpicking practices by the Customs Service. Today we will build on the testimony from our first hearing. We will receive testimony from persons in other aspects on international trade. I will be anxious to learn whether today's witnesses will reenforce and corroborate the criticisms we heard in June or whether they will describe a more positive situation.

The shortcomings in the commercial operations of the Customs Service have a real disruptive effect on international trade and business. We are competing in a world economy. If our ability to move cargo in a timely fashion does not meet world standards, we our hurting ourselves.

The attitude of the Customs Service reminds me of the attitude and public image the IRS used to have. They often projected a public image of a mysterious villain because it mistakenly believed this would improve compliance. The IRS found it achieves better results by being courteous and helpful to taxpayers.

I believe the Customs Service could improve its operations by following the examples of the IRS.

Mr. Chairman, I believe our objective should be to identify shortcomings in the Customs Service as the first step toward correcting them. I believe it should be possible to enforce our trade laws so that cargo moves in a reasonably prompt manner without sacrificing the enforcement goals.

It would be helpful if the witnesses could provide positive suggestions for improving the system in addition to adverse criticism to the system.

Mr. Chairman, I look forward to receiving today's testimony.

Chairman PICKLE. Thank you, Mr. Schulze. Our first panel consists of a representative from the Miami Free Zone Corp., Maria Leiva, who is executive vice president. Then from the Aircraft Owners & Pilots Association, Mr. Stephen Bassett, senior vice president for government and technical affairs. You are accompanied by Gail Lewis with the AOPA. She is director of Air Space, Government and Technical Affairs.

From the Customs and International Trade Bar Association, Mr. Joseph Donohue. Mr. Donohue is not here yet, his plane was delayed. We hope he can be with us. Then the American Surety Association, Mr. Robert Schaffer, vice president, Price Waterhouse and Mr. Schaffer is accompanied by William Sterrett.

That is all. We are going to ask each one of you gentlemen to proceed and we will start off with Maria Leiva first, and we will ask each one of you to summarize your statement within 5 minutes. We will set the time on it. Then we will come back for questions and we hope we can get good answers.

We have four panels today together with some Members of Congress to testify. We are supposed to be finished sometime after lunch, by 1, I think. So we will have to proceed fairly rapidly.

STATEMENT OF MARIA CAMILA LEIVA, EXECUTIVE VICE PRESIDENT, MIAMI FREE ZONE CORP., MIAMI, FL

Chairman PICKLE. So we will start off first with Maria Leiva. If you will proceed. All of your testimony will be included in the record in its entirety. We have your testimony and it will be included.

Ms. LEIVA. Good morning. For us in Miami the Customs Service has been a very interesting experience. Obviously, the Service is faced with a tremendous challenge, drug interdiction. However, the main function of Customs, protection of the revenue and commercial operations have been put in second place and almost forgotten. Probably because of lack of personnel and the limits in the head count, Customs has had to change their procedures to work with the commercial operations and turn into what they call the audit inspection system, meaning that all the responsibility of the day-to-day operations have been turned over to the trade, to the community and they only control the operations by doing audits after the fact.

Specifically, in Miami, we have many small companies, many small entrepreneurs trying to go into international trade, both import and export. It is difficult for them to learn to do business in a new environment. It is scary to go into international trade, and on top of that, we know that every time they make a mistake, they honestly go and ask for information, ask for help and they are going to be faced with a penalty.

That is making the operation very, very difficult. We have, in our operation, 150 companies from all over the world. Eighty-five percent of all the merchandise that goes through our zone gets reexported. Those companies do business in the United States, but they could do it anywhere else. We are creating employment, but if we make their life very difficult, it's very easy for them to go and find another place in the world to do business.

The fact that the operations are very large and Customs can't control then on a day-to-day basis, forces the people to try to hide their problems and compounds the problems, until there is a penalty when they are caught by U.S. Customs. There is another procedure that has hurt us tremendously. For 10 years we were able to advise the people in the community, the people that we worked with, that if they had discrepancies, they had shortages, to please come forward and let us know that that was the case.

They would do a voluntary tender, tender voluntarily their duties to the U.S. Customs Service and they would solve their problems. Many of the problems are mistakes. Overshipments, poor counting on their part, because they are small companies and they are learning to do business. Two years ago, because of the lack of personnel, Customs turned to the new audit inspection system and right now if we want to tender the duties, a penalty eventually is assessed against the zone.

That is discouraging a lot of people from doing business with us and second, from doing business and letting Customs and letting us know that they have shortages and they have problems. Obviously, the responsibility that U.S. Customs had before of the day-to-day operations has been turned over to us.

We are operators, but we are obviously private, and it is very difficult for us to enforce the Customs laws. We don't have the authority. When a company we know is committing a fraud or smuggling or whatever, we don't have the authority to tell them, please stop, or correct the mistake.

We are responsible to Customs. We have a bond, and that bond keeps being hit by all these penalties that obviously are going to make the surety company say, maybe we don't want to do this anymore. This risk is too great.

We don't want to continue doing business in that way. That is probably the far most important point that we have, that we are faced with the Customs Service.

Thank you.

[The statement of Ms. Maria Leiva follows:]

STATEMENT TO THE COMMITTEE ON WAYS AND MEANS

U. S. HOUSE OF REPRESENTATIVES

HEARINGS ON THE U. S. CUSTOMS SERVICE

SUBMITTED BY MARIA CAMILA LEIVA, EXECUTIVE VICE PRESIDENT

MIAMI FREE ZONE CORPORATION

On behalf of the Miami Free Zone Corporation (MFZ), I am pleased to submit this statement to the Members of the Commettee on Ways and Means, U. S. House of Representatives, relative to its hearings on the U. S. Customs Services.

I. Background of MFZ

MFZ is a corporation organized and existing under the laws of the State of Florida with its principal place of business at Miami, Florida.

MFZ operates Dade County's only duty-free foreign-trade zone, which is federally authorized in accordance with the Foreign-Trade Zones Act of 1934, 19 U.S.C. Sections 81a-u (the "Act"). The Act provides for granting, to approved public or private corporations, the privilege to establish and maintain a duty-free foreign-trade zone (FTZ) in a designated Customs port of entry, after application to the Foreign-Trade Zones Board, comprised of the Secretaries of Commerce, Treasury and Army. According to applicable federal regulations, the zone is to be operated as a public utility. 15 C.F.R. Section 400.1003.

FTZ's are outside the U.S. Customs territory for purposes of tariff liability, and goods entering FTZs are not subject to formal Customs requirements. 19 U.S.C. 18c.

In enacting the FTZ legislation, Congress sought to streamline international commerce procedures. Companies could utilize zones to warehouse or perform various operations on foreign goods before those goods were imported or reshipped abroad. These activities could thus avoid Customs duty and paperwork requirements involved in the formalities of entry into bonded warehouses and drawback provided in American tariff law.

The Congressional intent underlying the FTZ Act was "to expedite and encourage foreign commerce through U.S. zones," thereby expanding U.S. job opportunities by way of American and foreign investments domestically, all with a view toward favorably impacting our nation's economy and its balance of trade position. 19 U.S.C. Section 81a.

Miami Free Zone Corporation operates Miami's foreign-trade zone pursuant to an exclusive license agreement with Dade County's zone Grantee, the Greater Miami Foreign-Trade Zone, Inc., a non-profit Florida corporation affiliated with the Greater Miami Chamber of Commerce.

The Miami FTZ is engaged in a full range of international commercial activity provided for by the Act, including duty-free product storage, testing, relabeling, repackaging, displaying, repairing, manipulating, mixing, processing, assembling, destruction and manufacturing.

MFZ's tenants, numbering over one hundred and seventy five, handle 25 different commodity classifications from 81 countries of origin and destination; and deal with traditional export markets in the Caribbean, Central and South America as well as the Southeast U.S. regional import market. In excess of $1 billion in merchandise was processed thorugh MFZ in fiscal year 1987, bringing the total of goods handled to more than $5 billion since zone start-up in 1979.

II. Operational Highlights of Free Zones Internationally

During the past 50 years over 250 U.S. zones have been established (150 general purpose zones and 100 sub-zones) thereby fully meeting their proponents' expectations, while likewise contributing to our nation's international trade infrastructure. See, Exhibit 1. Millions of dollars have been allocated to construction, operation and maintenance of these facilities. It is estimated that more than 180,000 Americans are now employed directly or indirectly in the U.S. FTZ program. Executive Summary, Report of International Trade Commission on Implications of FTZs for U.S. Industries and for competitive Conditions Between U.S. and Foreign Firms, USITC Publication 2059, February, 1988.

The contribution of FTZs to our economy is profound (See, Exhibit 2), however, they have been hard pressed to compete with their international counterparts. Worldwide, free zones now process 20% of $1.8 trillion in global trade, for a total of $360 billion. See, Exhibits 1 and 3.

Current trends in international commerce and foreign investment promise an increasing demand and need for U.S. FTZs. The world economy is becoming more integrated and interdependent, where goods and components are easily manufactured and transported according to the sound economic principal of "lowest cost of production."

In this regard, Free Zones outside the U.S. have proliferated (numbering approximately 250) due to extremely favorable costs, promotional and tax policies, some of which grant tax holidays of up to 15 years for companies establishing operations within their jurisdiction.

Our task is not only to reverse the trend toward off-shore migration of manufacturing, but also to enhance our participation in global production and servicing opportunities - for both import and export markets.

III. Role of U.S. Customs in FTZs

Historically, the general role of the Customs Service in FTZs was to supervise for accountability and protection of the revenue the acts of admission, storage, handling, manipulation, manufacture, destruction, constructive transfer to the Customs territory, and removal of goods in conformity with U.S. laws and regulations and Customs policies and practices adopted thereunder. In addition, the District Directors of Customs are in local charge of any FTZ within their districts as resident representatives of the FTZ Board, and Customs officers under their supervision have assisted in carrying out this responsibility. U.S. Customs Manual Transmittal on FTZ Operations, Number 3200-64 (September 25, 1981).

However, as time has passed, Customs staffing priorities have shifted from commercial oversight to narcotics interdiction and personnel available to supervise zones declined while the number of FTZs continued to grow. This in turn resulted in delays in the approval of activation of zones, and presented problems for Customs in the exercise of effective control over zone operations, especially sub-zone manufacturing activities.

Therefore, Customs undertook an effort to devise a method to reduce Customs staffing requirements in zones without endangering its revenues or law enforcement priorities, while also not hampering the growth of zones or impeding commerce. See, Summary to Final Rule, 19 C.F.R. Part 1466, Federal Register, Vol. 51, No. 28, at Page 5041.

As a consequence, effective May 12th, 1986, Customs implemented a new audit-inspection method of zone supervision based upon spot checks and audits of FTZ activities as represented in records maintained by the zone Operator.

Critical to Customs Audit-Inspection Program is the assumption by the zone Operator of total responsibility for merchandise, maintaining records concerning merchandise, and physical supervision of the zone. The Operator is therefore subject to assessment of liquidated damages against it's Operator's bond to ensure performance of its duties under the regulations respecting proper zone supervision and recordkeeping. Operator liability for liquidated damages now equal the value of the merchandise involved in a default, or three times the value if the merchandise is of restricted status or consists of alcoholic beverages, together with any duties, taxes or charges found to be due on the goods. 19 C.F.R. 146.53, 19 C.F.R. 113.73.

IV. Areas of Concern and Suggested Remedial Measures

Given Customs' present staffing focus on drug interdiction as opposed to the monitoring of commercial activities, the implementation of the FTZ Audit-Inspection Program has witnessed the assessment of an unprecedented number of claims for liquidated damages against the FTZ Operator's bond. During fiscal year 1987, Miami Free Zone's Operator's bond was subjected to 70 claims for Customs liquidated damages totalling in excess of $1.2 million. The time and administative expense involved in petitioning Customs to mitigate or cancel these claims has severly threatened our ability to operate and respond to the needs of commerce.

Even in instances of minor zone user infractions voluntarily disclosed to the Fines and Penalties branch, Customs' philosophy has hardened to the point of maximum assessment of damages, in addition to the collection of duties. Historically, as long as duties were paid on merchandise not otherwise accounted for, Customs agreed that the revenue was indeed proctected.

Customs' current FTZ penalty assessment philosophy has therefore had a chilling effect on user voluntary disclosures of discrepancies. In addition, the unprecedented number and amounts of recent Customs' damage claims has prompted the surety companies underwriting the FTZ Operator's bond to threaten cancellation. Should the insurance community en masse determine there now exists an unreasonable risk in this area and withdraw from underwriting, the FTZ Operator would be placed in an untenable at-risk financial posture, and would likewise be in violation of Customs' regulations requiring such bond where computerized Alternative Inventory Control Systems have been implemented. These difficulties have in effect eroded the Congressional intent "to expedite and encourage foreign commerce through U.S. Zones."

The continued and increased utilization of the FTZ program should be one our country's central strategies in promoting U.S. industry in the world marketplace. In order to improve the competitive position of FTZs to ensure realization of their full potential, current policy must be re-evaluated to make zones more responsive to the needs of the international trade community.

Specific remedial measures should include augmented Customs staffing dedicated to commercial oversight in zones, and a re-orientation of Customs' current penalty assessment philosophy in keeping with Congressional intent respecting the zones program.

In addition, the consideration and implementation of the following proposals relative to systems support will allow U.S. FTZs to attract more international operations and facilitate national efforts to enhance our role in servicing and participating in international trade:

1) FTZs should be used as the focal point for U.S. Customs to accomplish their regulatory mandate. Great cost savings and operating efficiencies can be realized by making use of these regulated trade areas.

2) Standard U.S. Customs procedures should be developed to streamline transshipment procedures for merchandise not destined to U.S. commerce.

3) U.S. Customs inspection could be simplified on merchandise arriving in-bond to an FTZ, without import instructions. More rigorous inspection could be carried out prior to the merchandise entering U.S. commerce if applicable.

4) Paperwork procedures could be improved to accelerate turn-around time so as to obtain maximum advantage of economies of scale and staff use.

5) U.S. agencies should review and simplify requirements for transshipment or manufacturing for export involving regulated products (pharmaceuticals, foods, etc.).

6) A visa priority program could be created within the Department of Immigration and Naturalization for offshore executives and technical staff operating within U.S. Zones.

V. Conclusion

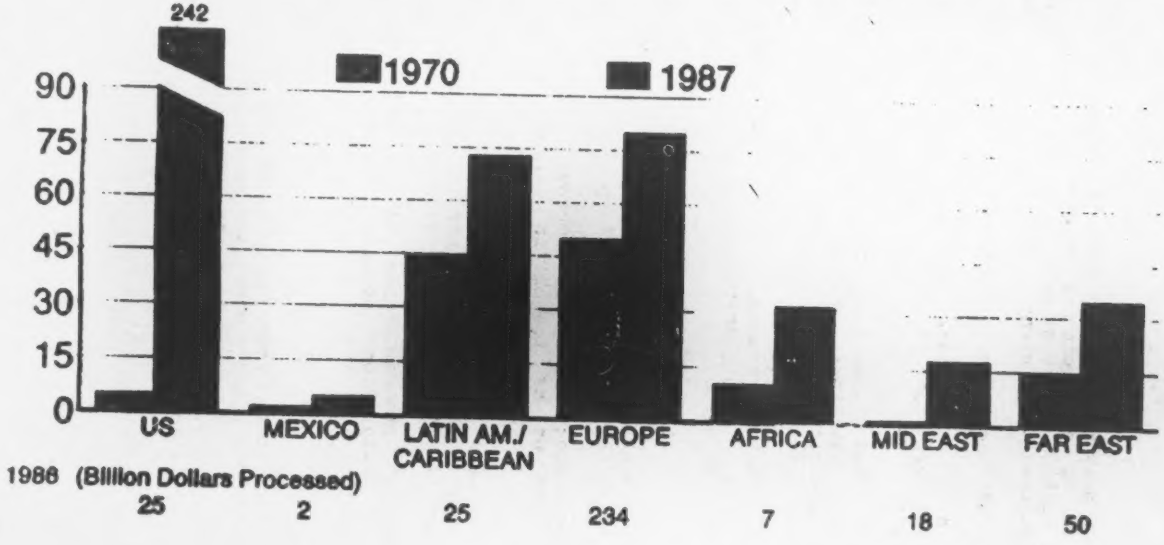
Members of the Committee, your support of these corrective measuresand programs will yield a wider and more productive use of FTZs, such that they will evolve into a very beneficial and unique opportunity for America's international traders. The Miami Free Zone Corporation looks forward to being of assistance in this important project.

Respectfully submitted,

María Camila Leiva

Maria Camila Leiva
Executive Vice President

FREE TRADE ZONE GROWTH 1970–1987



	1970	1987
Number of Free Trade Zones World Wide	131	495
Number of Free Trade Zones U.S.A.	9	242

Data: Tax Free Trade Zones of the World, by Walter H. and Dorothy B. Diamond, Matthew Bender & Co. Publisher.

EXHIBIT 1

MIAMI FREE ZONE

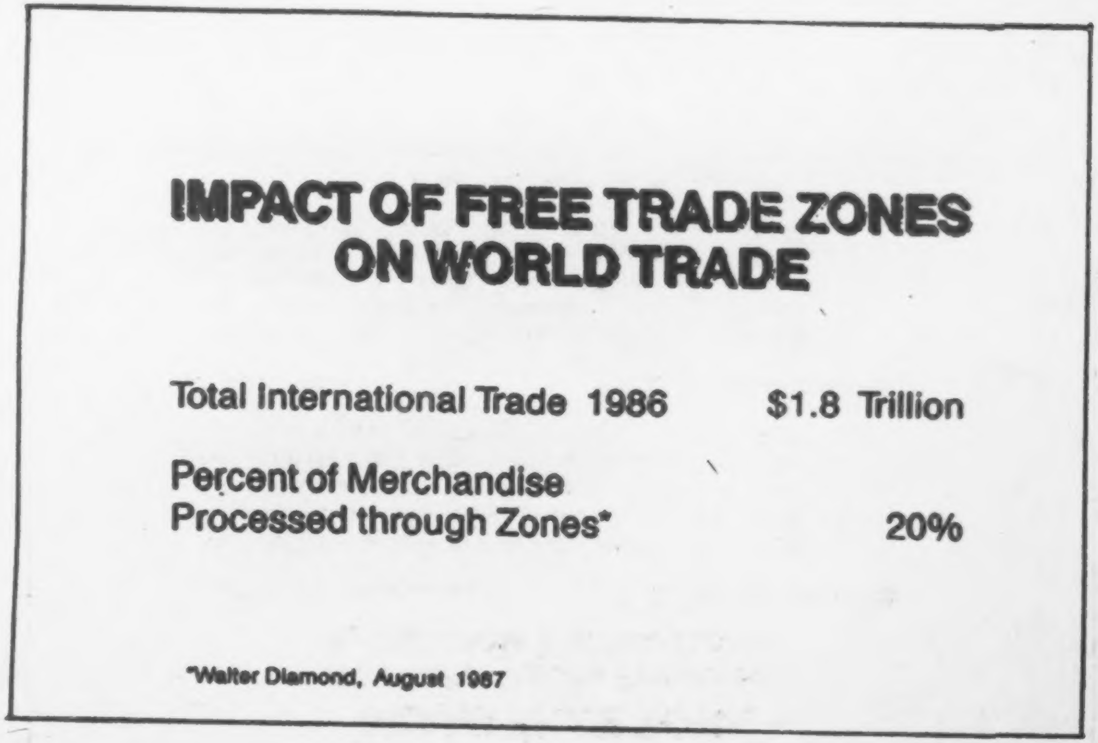
1985 Dollar Volume Processed
By U.S. Zones And Sub-Zones

General Purpose Zones	$ Processed (000,000)
1. McAllen, Texas ("Twin Plant" - Mexico)	473
2. Miami Free Zone (Distribution/Transshipment)	427
3. Ellis County, Texas (Distribution)	382
4. Long Beach, California (Distribution)	255
5. New Orleans (Distribution)	215

Sub-Zones	$ Processed (000,000)
1. Granite City, Il. – Chrysler (Auto Assembly)	6,878
2. Detroit – Ford (Auto Assembly)	4,921
3. Kansas City – Ford (Auto Assembly)	4,529
4. Detroit – Chrysler (Auto Assembly)	3,592
5. Cleveland – Ford (Auto Assembly)	3,545

Source: Foreign - Trade Zones Board, Washington, D.C.

EXHIBIT 2



IMPACT OF FREE TRADE ZONES ON WORLD TRADE

Total International Trade 1986	$1.8 Trillion
Percent of Merchandise Processed through Zones*	20%

*Walter Diamond, August 1987

EXHIBIT 3

Chairman PICKLE. Thank you, very much.

We have questions, but we will come back to you. We are going to proceed with the next witness.

STATEMENT OF STEPHEN R. BASSETT, ACTING SENIOR VICE PRESIDENT, GOVERNMENT AND TECHNICAL AFFAIRS, AIRCRAFT OWNERS & PILOTS ASSOCIATION, ACCOMPANIED BY GAIL W. LEWIS, DIRECTOR, AIR SPACE, GOVERNMENT AND TECHNICAL AFFAIRS

Chairman PICKLE. Next will be Mr. Bassett.

Mr. BASSETT. Mr. Chairman, thank you. We appreciate this opportunity to be before the committee today.

The Aircraft Owners & Pilots Association is an organization which represents more than 270,000 pilots and owners of general aviation aircraft. Our members fly for a variety of reasons. They fly for business reasons, personal reasons, and as you can imagine, they often fly across the borders, especially to Canada and to the south, and if they go out, that means they have to come in.

So clearly, we have a definite interest in the proceedings of this committee.

Let me first open by saying that the views of AOPA as well as our 270,000 members with respect to Customs is we support their activities. We are parents, too. We have children. I have a little 8-year old daughter and a 12-year old boy and we also want to ensure that our children can also grow up in an environment free of drugs.

So from that perspective, we are very supportive of the drug interdiction program of the administration and the support it has received from the U.S. Congress. but there is another side to that story and it is a side that you gentlemen alluded to early on.

I thought it was interesting when I heard the term "mysterious villain" mentioned with respect to the IRS. To some degree our people feel Customs also is somewhat of a mysterious villain. Our story deals with the people flying their aircraft being harassed or frightened or placed in compromising positions in terms of flight safety.

We have property being damaged or destroyed all together or confiscated. And by the way, with respect to property being confiscated, there is currently an amendment by Congressman Bill Hughes to H.R. 4868, and I would like to make a note that we are very much in support of that amendment, one which deals with the ability for people who have had aircraft confiscated and are found to be innocent, to be able to get their property back.

With respect to Customs, we are dealing in our opinion, with unrealistic policies, procedures, and requirements by Customs, that simply can't be met by law-abiding citizens, policies which place unreasonable demands on pilots, that create unnecessary conflicts between pilots and between Customs officials on location and that also places major financial burdens on many of our members.

We think if we were to categorize the problem in terms of a broad term, it would be the insensitivity, and I think the lack of knowledge that we see by Customs to not only what we do in airplanes, but how we do it, our operating procedures, how we operate enroute and around airports.

That probably, the failure by Customs in that area and a correction of that problem may be what would benefit both Customs and our members the most. Some examples of some of the policies and procedures that Customs has attempted to implement, for example, they would like to see in working with the FAA and going out to their facility in Oklahoma City, they would like to see photographs on all pilot certificates and annual registration of aircraft.

It was a great idea. We would support the concept. The problem is its impractical. They don't have the resources or facilities to implement such a policy. The policy nonetheless was adopted by Customs. Sometime back you will recall, Customs requested the authority to shoot down suspect aircraft which we took a rather strident position on. And the key word there is "suspect" aircraft. We understand if indeed I saw a report last night on television that 90 percent of the drugs in the country make it past our borders.

We recognize the difficult job Customs has in the interdiction of drugs, but there are innocent people out there. Just to go forth and suggest that we would like to shoot down suspect aircraft is somewhat unreasonable.

Another policy, for example, is 1-hour notice by pilots prior to a border crossing. It is a reasonable thought. The problem is it is impractical. It doesn't work. The reason it doesn't work is if you are going to give 1-hour notice, you are going to do it, hopefully, by telephone, is one way. There are some areas in the south of the United States that don't have telephone service, or the telephone service isn't good enough. The call may never make it through.

Another vehicle would be flight plans, filing advanced Customs notification on flight plans. That is nice too, but often times that message also doesn't get to Customs. The third would be radio contact with the air traffic control facility. It is a good idea, but below 10,000 feet you are not going to make radio contact anywhere outside of maybe 15 or 20 minutes offshore. That sets up the scenario that you can't call them one hour in advance so you call them and you circle and if you are in a radar coverage area which is 80 percent of the area around the borders, then you have got an air traffic controller watching you orbit around sharks and they have been trained, as Customs has been trained, that if an aircraft is orbiting, they must be dropping something into boats.

So clearly, we are set up in a very compromising type of position.

With respect to—we can go into whatever detail you wish, Mr. Chairman, but with respect to flight procedures and the way we fly versus the Customs needs in terms of sneaking up on folks, for a lack of a better term, they don't necessarily mesh. They put our people in compromising positions.

The same with airport operations. We have some horror stories. There was one, as an example, a gentleman named Gustavo Viero, who was in Miami, and he had about 1,000 hours. I recognize that my light went on and to the extent you want to pursue this now or later, but essentially he ended up having Customs trash his airplane with their Black Hawk helicopter, and he was nothing more than a suspect in their mind, but was very innocent. He had his airplane literally flipped over on the ground by a prop blast of the helicopter. He had M-16's pointed at him. He was arrested and the aircraft destroyed. He had done absolutely nothing wrong, because Customs had a target and lost it and picked him back up as their suspected target. And this gentleman writes letters of complaint and he gets great letters back and writes to the Vice President of the United States and gets nice letters back from Customs that, we are sorry, but you should have known better, and another one I saw is, we are sorry, but we hope you support the drug interdiction program of the Vice President. Have a nice day.

That is to a great degree part of the way that we are being dealt with by Customs. We have some recommendations. We will be glad to bring them to your attention as you desire, but in a nutshell, we think there are better ways for Customs to do their job.

We are more than happy to work with them and indeed have tried over the last year to do so.

Chairman PICKLE. Thank you.

[The statement of Mr. Stephen Basset follows:]

Statement of Stephen R. Bassett
Acting Senior Vice President
Government and Technical Affairs
Aircraft Owners and Pilots Association

Mr. Chairman, I am Stephen R. Bassett, Acting Senior Vice President of the Aircraft Owners and Pilots Association (AOPA). We share your concerns regarding the efficiency and effectiveness of the United States Customs Service (USCS), and we appreciate the opportunity to appear before this committee.

AOPA represents the aviation interests of 270,000 pilots and aircraft owners, many of whom depend on general aviation transportation for international business and personal travel. General aviation is a true cross-section of the aviation community and operates 98 percent of all registered civil aircraft in the United States. The general aviation fleet includes a variety of aircraft from single-engine-piston airplanes to high-performance jets. As Americans, we appreciate the importance of the Customs Services mission and join with you in deploring the drug problem facing our nation. As general aviation aircraft operators, however, we are faced with Customs enforcement policies and practices that place law-abiding citizens in life threatening situations and under unjustified economic hardships.

AOPA fully supports all reasonable procedures and policies to enhance the Drug Interdiction Program and overall Customs effectiveness. However, the lack of aviation knowledge of both Customs Headquarters and field inspection personnel has resulted in the establishment of unrealistic policies, procedures, and requirements that cannot be met by law-abiding citizens and place unreasonable, inappropriate demands on pilots which compromise safety and create unneccessary conflicts between pilots and Customs officers.

Mr. Chairman, our testimony today will address these issues and offer suggestions as to how we can work together to bring about improvements. We will identify for you what we see as unreasonable policies and procedures, the financial burdens that general aviation is shouldering as a result of the upsurge in enforcement activity, aviation operational considerations that are not thoroughly understood, the lack of standardization of Customs' procedures from field office to field office, and pilot perceptions about the professionalism of Customs service personnel.

We will make it clear that the Customs Service is in need of oversight. While it is not out of control, it is far too overzealous. The Customs Service must be made to accept the responsibility of its unlimited power.

UNREASONABLE POLICIES AND PROCEDURES

Customs lack of knowledge of the private aviation industry has resulted in the development and implementation of unreasonable policies and procedures that greatly restrict private aircraft operations and, in some cases, cannot even be met by private aircraft operators. Their failure to solicit support and assistance from aviation users and experts during their decision-making processes indicates total irresponsibility. While the establishment of a Federal Aviation Administration (FAA) office charged with helping Customs develop new policies provided reason for optimism, recent actions by Customs indicate that they will continue to act independently.

Customs recently decided to go forth with two new proposals that the FAA cannot possibly carry out due to staff, equipment, and facilities shortages. The FAA hosted Customs officials on a tour of their Airmen and Aircraft Registry Branch in Oklahoma and explained their inability to handle the workload the new requirements would produce. Nevertheless, Customs has proposed that pilots be issued photo pilot certificates and aircraft owners be required to register their aircraft annually. Customs' obvious refusal to acknowledge the abilities of the aviation community is unacceptable.

Other examples of unreasonable policies include the recent Customs request for authority to use deadly force in the apprehension of suspected drug traffickers and the requirement that all pilots provide at least one-hour prior notice of their border crossing when returning from a foreign port. Both were proposed without the benefit of user input or adequate evaluation of the affect of each proposal on aviation safety.

The Customs Service's request for authority to fire at and into suspect aircraft was totally irresponsible. First, this proposal represented a direct violation of a 1984 amendment to the Convention on International Civil Aviation Treaty which states that governments "must refrain from resorting to the use of weapons against civil aircraft in flight and that in case of interception, lives of persons on board and the safety of aircraft must not beendangered." The Customs Service proposal did not provide for adequate direction to ensure the safety of innocent people on or near a suspect aircraft.

Second, the proposal was put forth prior to Customs' investigating the availability of existing technology or other resources that could be used to improve their Drug Interdiction Program. At subsequent meetings in which AOPA and other users participated, it was clear that Customs Air Operations decision makers had not even coordinated with members of their own agency in the Ground Operations offices to evaluate existing agency procedures and technology available for use by air operation coordinators. They had failed to consider sharing current FAA or military air traffic technology or implementing advanced technology available from the private sector. Customs was not aware that the Federal Aviation Administration's (FAA) Central Flow Control Computer, developed in the private sector, has the potential to meet specific Customs requirements to aid in identifying and monitoring the progress of suspect aircraft.

Fortunately, the National Drug Policy Board determined that the use of deadly force was not appropriate in view of current technological alternatives and directed USCS to find tough alternatives to the proposal.

Another example of unreasonable Customs policy is its requirement that all pilots provide one-hour prior notice of border crossing when returning to the United States from a foreign port. General aviation pilots returning from ports south of our borders often find it impossible to provide this notice due to the lack of telephone and radio communications services. For example, many Bahamian, Caribbean, and Mexican ports do not have telephone or aviation communication services. Where these are available, they often are not dependable. As a result, many pilots are forced to make additional, expensive stops close to the U.S. border or remain airborne in foreign airspace after contacting U.S. authorities in order to comply with Customs' one-hour prior notice requirement.

AOPA does not question the benefit of Customs having an hours prior notice of an aircrafts arrival from a foreign point. However, to implement such a requirement that cannot be met by many international operators is irresponsible. The FAA and the aviation community have the resources available to help the Customs Service develop effective, reasonable policies and procedures to enhance Customs' ability to identify international aircraft and apprehend those involved in illegal operations. The Customs Service must work with FAA and the users of the aviation system to develop these procedures and then dedicate resources to educate their policy makers and field personnel on the abilities and limitations of pilots, aircraft and the federal air traffic system.

FINANCIAL BURDENS ON GENERAL AVIATION

At the present time, the financial responsibility for property damage and personal injury resulting from Customs activities has been solely borne by the general aviation community. AOPA believes that the USCS should be held financially responsible for any property damage or personal injury incurred as the result of Customs activities unless it is ultimately determined that there was a violation of the Customs laws. In addition, Customs should bear the financial responsibility for paying qualified mechanics to remove and replace aircraft inspection plates and ensure aircraft airworthiness after a border inspection. This will force Customs personnel to take reasonable precautions and care when handling aircraft and will certainly reduce the excessive financial burden general aviation is forced to incur.

While we do not agree with many of their enforcement tactics, we do recognize and support Customs' need for monitoring the progress of suspected aircraft discretely and apprehending a suspect aircraft upon arrival at its destination. However, we do not believe that innocent pilots and aircraft owners should be held financially responsible for aircraft damaged when overzealous Customs pilots cause them to crash during an attempted landing, force them off runways or cause damage due to the propellor wash of the apprehending Customs aircraft.

I have attached an article and related correspondence which clearly indicates the need for Customs to be held financially responsible for its actions. In summary, on July 9, 1987, a general aviation pilot, Mr. Gustavo Viera, took off in his single-engine Piper Cherokee on a local, domestic flight in Florida. According to William Rosenblatt, Assistant Commissioner, U.S. Customs Office of Enforcement, radar contact of a suspect aircraft was temporarily lost. Shortly thereafter, Mr. Viera's aircraft appeared on radar and was mistakenly assumed to be the suspect aircraft. Upon landing, Mr. Viera proceeded to exit the active runway onto a taxiway. Presumably, the Customs helicopter, in pursuit of the suspect aircraft, failed to recognize normal aircraft operations by Viera and manuevered in such a way as to flip Mr. Viera's aircraft over with the helicopter propellor wash. Fortunately, Mr. Viera was not seriously injured although his aircraft was destroyed. While Mr. Viera has received apologies from the Vice President's Office, the Drug Enforcement Administration, and the U.S. Customs Service, he is left with the full responsibility of paying off an aircraft that was destroyed by a federal agency. The injustice of the financial burden placed on Mr. Viera must be addressed. Corrective action must be taken to ensure that innocent pilots and aircraft owners are protected from such regrettable mistakes by a federal agency.

Even seemingly minor damage to an aircraft can place an unreasonable financial burden on a pilot or aircraft owner, in addition to creating a safety hazard. Excessive stress to the wing structure, a dent or tear in a wing, broken door hinge or unsecured inspection panel can represent a potentially fatal hazard and require expensive repairs. Never the less, Customs inspectors continue to place undue stress on aircraft by walking on wings forcing entrance and cargo doors to open wider than they are meant to be opened, and removing inspection panels by using improper tools such as screw drivers. Pilot requests to enlist the aid of qualified mechanics or personally assist a Customs inspector often fall on deaf ears or are rudely refused.

AOPA believes that relieving general aviation of these unfair burdens can be accomplished by providing Customs personnel training on appropriate aircraft handling and funding FIS facilities so as to afford the enlistment of qualified mechanics to assist in aircraft inspections and ensure aircraft airworthiness at the completion of an inspection.

OPERATIONAL CONSIDERATIONS

Customs' lack of understanding and awareness of standard civil aviation aircraft operations has led to unnecessary conflicts and misunderstandings and has created grave safety hazards. Customs pilots and field inspectors must be familiar with normal general aviation operating procedures if they are to accurately identify suspects without endangering innocent lives. They must be familiar with normal operational procedures and regulations set forth in the Federal Aviation Regulations (FAR) and recommended in the Airman's Information Manual (AIM) so that they can better anticipate general aviation pilot actions and differentiate normal, safe aircraft operations from attempts to escape the law.

Pilot and controller reports of reckless aircraft operations by USCS pilots describe Customs aircraft maneuvering dangerously close to civilian aircraft during the critical landing phase of flight; cutting suspect aircraft off on final approach to a runway in order to land immediately in front of suspect aircraft; taxiing onto active runways in front of a landing aircraft; entering controlled airspace without contacting appropriate air traffic facilities; and operating in terminal airspace at night without displaying navigation or landing lights.

As discussed earlier, maneuvering too close to a suspect aircraft, especially during the landing phase of flight, or while it is moving on the ground can cause aircraft damage, destruction and personal injury. Identifying aircraft operations intended to evade apprehension requires familiarity with FARs and a working knowledge of normal aircraft operations. Civilian pilots who become aware of other aircraft in their immediate vicinity in a terminal area will take appropriate evasive action to avoid an in-flight conflict. A civilian pilot will maneuver his aircraft so as to provide a safe operating distance between another aircraft and may choose to abort his landing or leave the normal traffic pattern area to provide for safety and an opportunity to determine the intentions of an unidentified aircraft. Such actions by a suspect have occasionally been interpreted by USCS pilots as an attempt to escape apprehension when in fact the civilian pilot was following standard procedures to ensure safety.

A general aviation pilot may also maneuver in a "suspicious" manner if he identifies a potential conflict with vehicles moving on the ground, be they other aircraft or automobiles. If a pilot identifies a moving aircraft or automobile near the runway environment and cannot determine the intentions of the vehicle, he will abort his landing and initiate go-around procedures in order to avoid a conflict.

Customs pilots and officials must acknowledge and understand normal general aviation aircraft operations if they are to positively identify suspicious activity. Customs officials who do not announce their position or intentions to local air traffic controllers or pilots must understand that a civilian pilot who becomes aware of another aircraft in close proximity will take positive action to maintain safety.

STANDARDIZATION OF PROCEDURES

Another major concern of the general aviation community is the lack of standardization and understanding of USCS rules and regulations by Customs personnel in the field. For example, AOPA was recently called upon to intervene in disputes between pilots and Customs Service inspectors when a regional Customs office established policy not consistent with national policy. The regional office instructed the Field Inspection Service (FIS) facilities to refuse pilots prior notification of border crossing by an established mode of communications determined by Customs Headquarters. Although Customs Headquarters resolved the dispute in a timely fashion, pilots had been unjustly threatened with enforcement action and forced to submit to excessive delays upon return to the United States because they had complied with national policy which was not acceptable in this particular region.

Reports from international pilots and aircraft owners also indicate that established USCS fine criteria for specific violations of Customs Laws are not being used by Customs officials. For example, while some first-time offenders who have failed to provide the required one-hour prior notice of border crossing have received verbal warnings, others have faced fines in excess of $5000. Such inconsistencies are not acceptable. Familiarity with Customs rules, regulations and national Customs policy should be a minimum requirement for any Customs official.

Pilot reports also indicate that Customs requirements regarding the completion of inbound declaration forms vary widely. Some inspectors expect the forms to be filled out by the pilot before arrival, others will not accept forms unless the pilots fill them out in the presence of a USCS inspector, and still others will not accept forms filled out by pilots but insist that an inspector must complete them. These variations create unnecessary conflicts between Customs officials and pilots who often are complying with Customs directives given to them on previous flights.

Such inconsistencies cannot be tolerated. Law-abiding citizens in the aviation community face stiff fines and possible aircraft confiscation for not knowing and following Customs rules and regulations. Yet, Customs officials are, in some cases, less knowledgeable about Customs rules and regulations than the people they are charged with inspecting. AOPA recommends that the Customs Service implement regular refresher courses in addition to more comprehensive initial training to ensure that Customs inspectors are familiar with and understand existing and newly implemented regulations and procedures.

PROFESSIONALISM

AOPA has received many verbal and written reports from pilots indicating that the overall level of professionalism displayed by Customs inspectors is extremely poor. Pilots and their passengers report that Customs officials actions reflect a supercilious attitude, that they are uncooperative when asked to identify themselves, and question international travelers in an accusatory fashion. These reports indicate a complete lack of professionalism which is not expected or acceptable from a federal law enforcement agent.

We understand that there is spelled out in the statutes authorizing Customs searches and seizures a pragmatic "border exception" to the Fourth Amendment requirements of warrants and probable cause. Under this exception, neither a warrant nor probable cause is required where a search of incoming persons or property by Customs officials takes place at an international border or its functional equivalent. However, this does not give Customs officials the authority to do anything they "damn well please" as many Customs agents apparently believe.

We do not expect Customs officials to in any way endanger their lives by being "nice" to suspected drug traffickers. However, we do not expect innocent pilots and passengers who have lost personal property or been threatened with deadly force and ultimately found innocent of any wrongdoing to be treated with malice and contempt by Customs Officials who feel cheated because they couldn't make an arrest or take formal action. We have received numerous reports of pilots and passengers who were mistaken for suspects, forced to lie face down on the ground with machine guns pointed at their heads and then did not even receive a word to signify the inspection was complete, let alone an apology. These people were left lying on the ramp until the officials returned to their vehicles and left the area. In most cases, the individuals were not even given an opportunity to get a badge number or explanation of Customs activities.

Pilots report being denied the right to be on hand during Customs inspection of their aircraft and obnoxious rebuttals to their offers to assist inspectors in order to reduce aircraft damage. Pilots and passengers who have followed national or regional policy that differs from an FIS requirement are often treated with disdain. Requests for Customs official identification or the right to contact an attorney before questioning are often denied until pilots clearly demonstrate their knowledge regarding their rights. Such behavior by federal agents is appalling. International travelers who arrive in the United States of America, whether U.S. citizens or not, should not be treated with contempt just because they have crossed an international border. Of even greater concern to this committee and AOPA is the fear of the repercussions and ramifications of reporting such behavior.

Many pilots depend on general aviation for international business and personal travel. AOPA's pleas for documentation of inappropriate Customs activities are often refused because pilots and aircraft owners are afraid local Customs officials will destroy their businesses or property as a result of a formal complaint. While we cannot quantify the validity of such fears, the fact that they exist is justification for serious consideration.

PROTECTION OF THE INNOCENT INDIVIDUAL AFTER THE SEIZURE OF PROPERTY

In order to protect the innocent individual in a forfeiture situation, Congressman Bill Hughes has offered an amendment to the Anti-Drug Abuse Amendments Act of 1988, H.R. 4868. This amendment requires government branches to comply with the Amendments to the Constitution. It has been reported out of the Judiciary Committee and is being considered in the Trade Subcommittee of the Ways and Means Committee.

Under the Administration's Zero Tolerance drug enforcement policy, an aircraft owner's plane can be seized if drug trafficking is suspected. The plane becomes property of the government. An aircraft owner may wait for months before getting a hearing on the forfeiture and his livelihood could be destroyed even if he is blameless of any wrongdoing. Aircraft owners have no protection and no compensation when their property is wrongfully seized and rendered unairworthy. Furthermore, an owner is not guaranteed a hearing if he did not know to request a hearing in the time allowed.

Under the Hughes Amendment, the individual would be informed of his rights and the correct procedure to follow when his property is being taken. The individual would receive a preliminary hearing within seven days of the forfeiture in order to determine if the seizure was valid. The court would be given the power, in the preliminary hearing, to order suspension of the seizure unless there is substantial probability that the U.S. will win the forfeiture and/or the need for seizure outweight the hardship to the individual. The Attorney General would be required to file a complaint within 30 days after the preliminary hearing to begin proceedings or the court may dismiss the forfeiture. The individual would be given the right to post a bond for the property seized and, if permissible, be able to use the property until the outcome of the hearing.

Giving an innocent individual these rights in a forfeiture situation does not curtail the government's power in the drug war, but it helps to protect against the devastating effect a property seizure can have.

AOPA strongly urges full support of this amendment at the subcommittee and committee level as the first step toward creating a strong, effective anti-drug policy that does not destroy the rights of the innocent American citizen.

SUMMARY

AOPA recognizes the importance of stopping the flow of illegal drugs into the United States. The general aviation community is interested in helping the Customs and Coast Guard Services achieve maximum effectiveness in this effort, and we believe that we can play an important role in the drug interdiction program if the Customs Service would allow us an opportunity to share our knowledge of aviation with Customs Service policy makers. It is also important that we gain a better understanding of Customs requirements and concerns so that together we can develop policies, procedures, and regulations that are effective without being overly restrictive.

The Customs Service must dedicate the resources for comprehensive initial and continued aviation training of personnel. They must dedicate the resources to implement advanced technology. They must be more conscientious about sharing their technology with different internal units and investigate existing air traffic resources available that will help them to increase their efficiency and effectiveness.

However, Customs has proven that it is unwilling to accept responsibility for developing reasonable policies and procedures that are both effective and reasonable. If we are to protect our borders and our law-abiding citizens, a system of checks and balances must be established to prevent Customs from abusing its power.

Pilot mistaken as drug courier

His plane is wrecked in error

By DAVID LYONS
Herald Staff Writer

One hot afternoon last July, Gustavo A. Viera, a Miami accountant and novice pilot, left work early to take a spin in his newly acquired Piper Cherokee. His flight plan was simple: a joy ride over Biscayne Bay.

But Viera, 28, found the skies most unfriendly, his plane wrecked when the nation's war against drugs mistakenly declared him the enemy.

The flight ended with his single-engine plane flipped upside down, his face in the dirt and federal drug agents pointing guns at his head.

The lawmen — two from the U.S. Customs Service, two from the Drug Enforcement Administration and two Bahamian constables — thought they had rounded up an inbound drug smuggler from the Bahamas. They downed the wrong man.

BILL FRAKES / Miami Herald Staff

Gustavo Viera, a pilot who was chased and interrogated by federal drug agents, has a new plane now.

Loud engines

Now, Viera is wondering what would have happened if a Customs proposal to shoot at suspected drug aircraft had been in effect. He didn't hear or see the big government Blackhawk helicopter that followed him on July 9 until he was on the ground.

"When you're in one of these airplanes where the engine is loud and they shoot out a warning, you're not going to hear it," he said. "I wasn't even aware they were there."

Aside from some cuts and bruises, and 45 minutes in custody when he says he was banged in the back of the head, menaced with M-16 rifles and handcuffed, Viera was unhurt. The plane was wrecked beyond repair. The government said this is to be expected if you live in Dade County.

Rene Betancourt, a friend and client of Viera, remembers seeing his accountant land his plane with the Blackhawk in hot pursuit.

"When he was turning left to get out of the runway, presumably, the pilot of the helicopter thought Gus was trying to run away," Betancourt said. "He made a maneuver with a blast of the prop, and turned Gus' plane upside down.

"When we saw that, we knew they were trying to get Gus for something," he said.

Wrong plane

The agents released Viera after learning from headquarters that they had snared the wrong plane and pilot. Viera fired off a letter of protest to Vice President George Bush's task force against drugs.

Customs and the DEA wrote back. Both were apologetic. Both offered regrets, but no money.

William Rosenblatt, an assistant commissioner in the Customs office of enforcement, pleaded for understanding:

"As a resident of Dade County, Fla., you are in a position to view firsthand the drug-related violence that occurs on an almost daily basis," he said. "It is largely due to the extreme violence perpetrated by those involved in the drug trade, that our officers are authorized to take those steps which, to the average law-abiding citizen like yourself, might seem excessive."

Rosenblatt said, "Our radar temporarily lost the track on the suspected aircraft. Soon thereafter, your aircraft appeared on radar, and based on information received from various sources, it was incorrectly assumed that your aircraft was in fact the suspect."

As for Viera's treatment on the ground, Rosenblatt wrote that the government agents "were only following the standard procedures for ensuring officer safety."

"We found no evidence of either physical or verbal abuse," he said.

Rosenblatt said he hoped Viera would "see fit to support the vice president in the national war on illegal drugs."

David L. Westrate, assistant administrator for operations of the Drug Enforcement Administration, responded in a similar vein.

"We are quite concerned and deeply regret any possible potential for injury or inconvenience to citizens who are mistakenly caught up in hazardous circumstances," he wrote.

"The war on drugs requires the full effort of government forces in cooperation with each and every citizen and the loss of support of even one citizen is a serious matter."

Roger Garland, chief of the Customs air branch based at Homestead, said it was the first time an accident like Viera's had happened.

"Normally," he said, "we wouldn't even do that to a bad guy."

OFFICE OF THE VICE PRESIDENT
WASHINGTON

October 21, 1987

Mr. Gustavo A. Viera
7610 S.W. 79 Ct.
Miami, Florida 33143

Dear Mr. Viera:

As the Director of the Vice President's National Narcotics Border Interdiction System, I have been asked to respond to your letter of September 18. We have expressed concern and forwarded copies of your letter to the United States Customs Service and the Drug Enforcement Administration to review the incident for appropriate follow-up action including a direct response to you.

Any inconvenience this incident has caused is unfortunate and we are confident that the enforcement agencies involved will respond in a timely manner.

Sincerely,

Howard Gehring
Director, National Narcotics
Border Interdiction System

U.S. Department of Justice

Drug Enforcement Administration

Washington, D.C. 20537

NOV 25 1987

Mr. Gustavo A. Viera
7610 S.W. 79 Ct.
Miami, Florida 33143

Dear Mr. Viera:

Your letter dated September 18, 1987 to Vice President Bush has been transmitted to the Drug Enforcement Administration (DEA) and the U.S. Customs Service for appropriate action and response.

As indicated in the brief response to you from the Office of the Vice President, we are quite concerned and deeply regret any possible potential for injury or inconvenience to citizens who are mistakenly caught up in hazardous circumstances. Based on your report of the incident and knowledge of the enforcement action which was being conducted, I, on behalf of the DEA, wish to extend our regrets for activity which could result in injury or even the threat of injury to you.

Living in Florida, and particularly in the Miami area, I am sure that you are well aware of the illegal narcotic activity which is reported by the news media. The magnitude of the problem in South Florida has resulted in ever increasing efforts by the U.S. Government to stem the flow of drugs into the United States. Increased efforts include highly sophisticated detection methodology as well as extremely powerful surveillance and apprehension capabilities. The enforcement operation which resulted in the unfortunate accident and destruction of your aircraft is a joint U.S. Customs/DEA effort to prevent large loads of cocaine from entering the U.S. to be used for the detriment of the minds and bodies of U.S. citizens. The operation of the helicopter is the responsibility of the U.S. Customs Service, and I am quite sure that as a result of the incident a full review of air operations has been initiated to prevent future accidents.

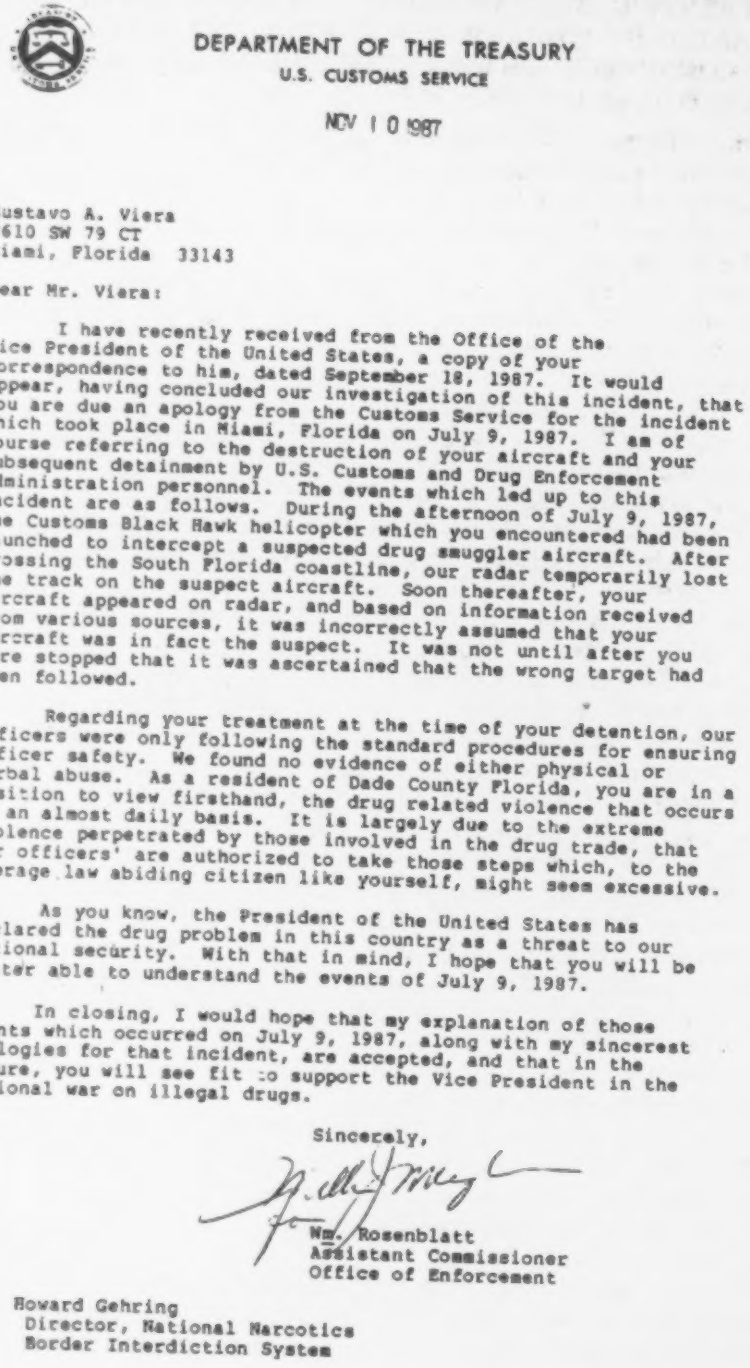
The war on drugs requires the full effort of Government forces in cooperation with each and every citizen and the loss of support of even one citizen is a serious matter.

On behalf of DEA please accept our regrets for this accident.

Sincerely,

David L. Westrate

David L. Westrate
Assistant Administrator
for Operations



DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOV 10 1987

Gustavo A. Viera
7610 SW 79 CT
Miami, Florida 33143

Dear Mr. Viera:

I have recently received from the Office of the Vice President of the United States, a copy of your correspondence to him, dated September 18, 1987. It would appear, having concluded our investigation of this incident, that you are due an apology from the Customs Service for the incident which took place in Miami, Florida on July 9, 1987. I am of course referring to the destruction of your aircraft and your subsequent detainment by U.S. Customs and Drug Enforcement Administration personnel. The events which led up to this incident are as follows. During the afternoon of July 9, 1987, the Customs Black Hawk helicopter which you encountered had been launched to intercept a suspected drug smuggler aircraft. After crossing the South Florida coastline, our radar temporarily lost the track on the suspect aircraft. Soon thereafter, your aircraft appeared on radar, and based on information received from various sources, it was incorrectly assumed that your aircraft was in fact the suspect. It was not until after you were stopped that it was ascertained that the wrong target had been followed.

Regarding your treatment at the time of your detention, our officers were only following the standard procedures for ensuring officer safety. We found no evidence of either physical or verbal abuse. As a resident of Dade County Florida, you are in a position to view firsthand, the drug related violence that occurs on an almost daily basis. It is largely due to the extreme violence perpetrated by those involved in the drug trade, that our officers' are authorized to take those steps which, to the average law abiding citizen like yourself, might seem excessive.

As you know, the President of the United States has declared the drug problem in this country as a threat to our National security. With that in mind, I hope that you will be better able to understand the events of July 9, 1987.

In closing, I would hope that my explanation of those events which occurred on July 9, 1987, along with my sincerest apologies for that incident, are accepted, and that in the future, you will see fit to support the Vice President in the National war on illegal drugs.

Sincerely,

Wm. Rosenblatt
Assistant Commissioner
Office of Enforcement

cc: Howard Gehring
Director, National Narcotics
Border Interdiction System

STATEMENT OF ROBERT P. SCHAFFER, PRICE WATERHOUSE, REPRESENTING THE AMERICAN SURETY ASSOCIATION, ACCOMPANIED BY WILLIAM D. STERRETT, CHAIRMAN, CUSTOMS BOND COMMITTEE (CHAIRMAN OF THE BOARD, WASHINGTON INTERNATIONAL INSURANCE CO.)

Chairman PICKLE. Now we will go to Mr. Schaffer representing the American Surety Association. Mr. Schaffer.

Mr. SCHAFFER. Thank you, Mr. Chairman.

We are pleased to have this opportunity to address the committee on the important——

Chairman PICKLE. Let me interrupt you. I assume you do not have an additional statement, Ms. Lewis. You are accompanying Mr. Bassett, is that correct?

Ms. LEWIS. Yes.

Chairman PICKLE. Go ahead.

Mr. SCHAFFER. We are pleased to have the opportunity to address the committee on the important role of sureties and administration of Customs laws and regulations.

In our testimony we would like to focus on suggesting several changes which we believe will promote improved Customs and sureties relations.

I would like to begin with a brief explanation of how the surety bonds have, in the last century, formed an integral part of Customs transactions because the bond guarantees payment of duty and compliance with regulations, Customs need perform only those tasks related to cargo examination before clearing a shipment.

At seaports and airports, this can mean that good are released within a matter of hours. At land border ports, the trucker may literally leave the engine running while customs clearance is effected. A second important benefit is that the bond system protects the Government from revenue losses. When the importer doesn't pay, often due to a business failure, the surety becomes liable for the payment of the amount owed.

The third benefit and one which is not widely recognized is that the surety plays a vital role in customs collections. Customs today doesn't have a collection department. Primarily because unpaid bills are simply issued to the surety and Customs itself doesn't have to purcue further collections.

The areas we have identified for change and would like to present include procedural changes, changes that may require statutory or regulatory reform and policy revisions that we believe will provide the basis for improved enforcement and service to the importing community.

While much of the testimony will focus on problems in the current environment, we would like to highlight some of the positive initiatives Customs has undertaken. For example, over the last several months they have designed and tested an automated surety interface, known as ASI. In a related project, Customs automated the claims processing tasks of their fines, penalty and forfeiture offices. In Project 6000, Customs cleared its revenue system of many delinquent accounts receivable. The initial phases created confusion, but the final result was positive.

We would like to encourage more of the progressive thinking that gave rise to these initiatives and suggest additional ways problems can be reduced. I would like to highlight briefly three of the procedural changes that we focused on for improving the collection process.

For example, the process could be substantially improved by expediting the issuance of certain liquidated damage claims. Liquidated damages are monetary penalties for the breach of a bond condition and are used to guarantee compliance with Customs laws and regulations.

This is much more effectively accomplished when the penalty is imposed directly following the violation. The Customs regulations provide "immediate" notice in cases where entries aren't filed. But there is currently no definition of the term "immediate" in their regulations which requires Customs to act in a specified time period.

As a result, significant problems have arisen. Delays in notifications have led to inequities. In a case in Los Angeles, for example, a Customs broker converted to his own use $1.5 million in duty entrusted to him by 73 importers. Customs failed to notify the importers or the surety for a period of 6 months, allowing 306 separate entry transactions to occur without payment of the duty before sending the first notice.

More than three-quarters of the offending accounts could have been avoided if the notices had been timely issued. We believe Customs should define the term "immediate" and set specific time limits on the issuance of nonfiling claims.

Then if Customs fails to provide timely notice, the government should be precluded from action. This would expedite the issuance of and ultimately the resolution of liquidated damage cases.

Also in the same area, although violators and sureties are held to strict time limits in responding to penalty notices, Customs is limited only by the statute of limitations. Thus, the violator or the surety has 90 days to petition, while Customs has 6 years to act.

When a penalty settlement is prolonged, the actual violator often escapes payment because he can't be located after the decision is issued. While collection for the surety protects the revenue, it serves no purpose as a punishment since the surety is never a party to the violation. To remedy this, we believe Customs should establish a 6-month time limit for decisions on petitions seeking relief for liquidated damages cases.

If no decision is issued within that time, again we believe the petition should be deemed allowed.

In the area of protest, which is a related matter, the statute provides that Customs has 2 years to act on a protest. Customs is able to decide the vast majority of protests within 1 year. In practice, most can be decided within a few weeks. We believe again Customs should promulgate regulations to require that protests must be approved or denied within 1 year and unless the review period is extended for due cause and notice of extension is given to the importer and surety. If Customs fails to act timely, we believe the protest should be deemed approved.

These modifications and others we believe will improve the administration of the surety program by providing guidelines for the

Government as well as the importing community to act timely, to resolve problems and therefore to reduce the uncertainty in these trade matters.

We have other comments and we will submit them for the record.

Thank you.

[The statement of Mr. Robert Schaffer follows:]

PREPARED STATEMENT
OF
ROBERT P. SCHAFFER
PRICE WATERHOUSE

Presented to the Oversight Committee
House Ways and Means Committee
Washington, D.C.

August 9, 1988

Mr. Chairman and members of the Subcommittee:

My name is Robert P. Schaffer. I am with the accounting and consulting firm of Price Waterhouse and direct the firm's Customs Services Practice. Price Waterhouse was retained by the American Surety Association to review current relations between Customs and the surety industry. With me today is William D. Sterrett, Chairman of the Board of Washington International Insurance Company and Chairman of the Customs Bond Committee of The American Surety Association.

The Price Waterhouse Customs Services Practice provides consulting services on Customs and trade matters to importers, exporters, customs brokers, and corporate sureties on Customs bonds. I have twenty-five years of experience in the customs field, including over twenty years with the U.S. Customs Service. Prior to entering the private sector, I served as the Assistant Commissioner, Commercial Operations for Customs, and was a member of the Senior Executive Service.

I am pleased to have this opportunity to address the Committee on the important role of sureties in the administration of Customs laws and regulations. As a result of our review, I will also suggest several changes which will promote improved Customs/surety relations. We envision that these suggestions will be a starting point for further discussions among sureties, U.S. Customs, importers, and brokers. Our objective is to improve communications between the parties involved in surety-related transactions and to promote a more efficient working relationship with the Service.

THE IMPORTANCE OF SURETY IN CUSTOMS TRANSACTIONS

I would like to begin with a brief explanation of how surety bonds have for the last century formed an integral part of Customs transactions. Bonds serve two functions:

- They guarantee that all duties and taxes will be paid.
- They provide for liquidated damages which are assessed when importers, international carriers, warehouse proprietors and other parties who transact Customs business fail to comply with laws and regulations covered in the bond contract.

I. Surety Bonds Speed Clearance of Goods

The surety bond system provides several significant benefits to Customs and the importing community. One of the most significant is that the bond permits goods to flow rapidly through U.S. ports without unnecessary delays in release from Customs custody. At seaports and airports, the goods may be released within a matter of hours. At land border ports, the trucker may literally leave the engine running while Customs clearance is effected. Because the bond guarantees payment of duty and compliance with the regulations, Customs need perform only those tasks related to cargo examination before clearing the shipment. Appraisement, classification, collection of the duty and other administrative tasks can take place after the goods are on their way to final destination.

2. Bonds Protect the Government from Revenue Losses

A second important benefit is that the bond system protects the government from revenue losses. For most Customs transactions, the duty is paid after release of the shipment. Estimated duties are paid within 10 days, but increased duties may be assessed up to three years or more after the date of entry. When the importer does not pay, often due to a business failure, the surety becomes liable for payment of the amount owed.

3. Surety Plays a Vital Role in Customs Collections

A third benefit, and one which is not widely recognized, is that the surety plays a vital role in Customs collections. Customs today does not have a "Collections Department," primarily because duty bills or claims for liquidated damages which are not paid by the importer are issued to the surety. In thousands of instances every year, surety's own collection efforts induce the importer to pay. Often this involves locating the importer and explaining the nature of the bill. If the importer is bankrupt or cannot be located, the surety either pays or files a protest or petition on its own behalf. Customs itself does not have to pursue further collection actions.

The total dollars actually paid by sureties in increased duties and liquidated damages reflects only a fraction of the impact of the surety role in Customs collections. Although the overall positive impact is clear, surety's contribution is difficult to quantify for two reasons. First, the surety often takes steps through its underwriting guidelines at the time the bond is executed to prevent potential defaults. For example, in certain high risk transactions, the surety may require a letter of credit from the importer as security to guarantee performance.

In general, surety's interests coincide with Customs' interests. Both strive to have the importer, carrier, warehouse proprietor, or other party who is transacting customs business pay all amounts due and comply with the applicable law or regulations. In the relatively small percentage of transactions where surety itself must pay, surety seeks to determine the correct amount owed and efficiently settle the claim.

4. Role of Brokers in Filing Bonds

We have explained the relationship of surety to U.S. Customs. It is also appropriate at this point to explain the relationship of surety to the customs broker, who plays a key role in the bond system. Most bonds are actually filed through brokers who either have a grant of power of attorney or a supply of corporate surety's bonds that have been pre-executed by means of a facsimile seal and signature. The surety provides the broker with underwriting guidelines which permit the broker to file bonds under specified conditions without first contacting the corporate surety or its general agent. Bonds outside the broker's designated authority are to be referred to the surety or its general agent for approval before they are filed.

RECENT CUSTOMS INITIATIVES

There are many hard-working, dedicated employees at Customs who do their jobs in spite of increasing volume and constant or declining resources, and their accomplishments should be recognized. While much of this testimony will focus on problems in the current environment, we would like to highlight some of the positive initiatives that Customs has recently undertaken. The purpose of these initiatives has been to reduce paperwork, automate claims processing, reduce backlogs, and provide more timely information.

In conjunction with pursuing the automation initiatives of the Automated Commercial System, Customs has in the last several months designed and tested an Automated Surety Interface, or ASI. ASI will speed settlement of bills by providing sureties with more timely information. It will also assist surety in setting aside loss reserves and establishing underwriting guidelines. In a related project, Customs automated the claims processing tasks of the Fines, Penalties & Forfeitures (FP&F) Offices in the Customs districts. The FP&F sytem helps Customs manage and control the complex penalty settlement process and, at the same time, provides surety with key information through the ASI system.

New bond regulations and a new bond form became effective in 1985. Customs worked closely with sureties, brokers, and importers to simplify procedures, consolidate forms, update bond wording, and establish improved controls. Further proposed changes would require continuous bonds to be filed at a single location (the National Finance Center in Indianapolis), and would require that a cover letter signed by the surety be submitted. These changes were proposed to simplify bond retrieval and to eliminate problems that occur when surety is unaware of its potential liability because Customs brokers do not report to the surety on all bonds filed and many times Customs fails to return appropriate copies of the bond to the surety.

Project 6000 was a recent initiative in which Customs sought to clear its revenue system of past due accounts receivable. After careful examination, many claims were found to be invalid and were cancelled. Many others were settled through offers in compromise. Although the initial phases of the project created some confusion among sureties, importers, and brokers, the final result was positive. Both sureties and Customs were able to reconcile many long past due accounts and agree on settlements.

PROBLEMS AND RECOMMENDATIONS

We would like to encourage more of the progressive thinking that gave rise to these initiatives and suggest some additional ways in which Customs and surety problems can be reduced. The purpose of these comments is to identify the issues and lay the groundwork for further study by Customs and the surety industry.

1. Expedited Issuance of Liquidated Damages Claims

Liquidated damages are monetary "penalties" for breach of a bond condition and are used to guarantee compliance with the Customs laws and regulations. Customs' interests are best served by prompt issuance of liquidated damages claims because they produce revenue for the government. Delays should, of course, be minimized. An equally important function of liquidated damages is to cause the violator to comply. This is much more effectively accomplished when the penalty is imposed directly following the violation.

Surety benefits from rapid settlement of liquidated damages claims because the risk of default by the principal on bond increases sharply over time. Defaults may occur as a result of business failures or because the importer simply cannot be located. Surety's ability to file petitions for mitigation on its own behalf is also hampered by long delays because records often cannot be reconstructed.

Sureties have suffered serious harm as a result of Customs delays. For example, Customs has in some instances delayed for months in issuing liquidated damages claims for "non-filing," or failure to pay the estimated duties within 10 working days after release of the goods. In some situations, the failure to pay was caused by either the importer's or the broker's financial condition. In other situations, the failure to pay was caused by fraudulent activities by the broker.

In one notable case in Los Angeles, a customs broker converted to his own use $1.5 million in duty entrusted to him by 73 importers. Customs failed to notify either the importers or the surety for a period of six months, allowing 306 separate entry transactions to occur without payment of duty before sending the first notice. More than three-quarters of the offending acts could have been avoided if the notices had been issued timely.

Sections 142.15 and 142.27 of the Customs Regulations provide that the District Director shall make immediate demand for liquidated damages in each case where there is a failure to file the entry timely. Six months is certainly not immediate. But there is currently no definition of "immediate" in the regulations which requires Customs to act within a specified time period.

Customs should be required to define "immediate" and set a specific time limit on issuance of non-filing claims. Then, if Customs fails to provide timely notice, the government should be precluded from issuing a claim.

2. Expedited Settlement of Liquidated Damages Claims

For the same reasons that liquidated damages claims should be promptly issued, they should also be promptly settled. Although violators and sureties are held to strict time limits for filing petitions, the only time constraint for Customs in settling liquidated damages claims is the statute of limitations. Thus, the violator or surety has 90 days to respond, while Customs has six years to act.

Delays in claims settlement are not new. In a report issued in 1978, the Comptroller General noted that penalty case settlement delays were a problem. In response to this report, the Under Secretary of the Treasury acknowledged that the penalty process was unduly prolonged, the government was deprived of revenue, the violator was unduly punished by the process itself, and the objective of the penalty as a deterrent was seriously undermined. Ten years later, the same findings could be made.

A further problem with prolonged penalty settlement is that the actual violator often escapes payment if long delays occur. For old cases, the surety often has to pay because the violator cannot be located. While collection from the surety protects the revenue, it serves no purpose as a punishment or deterrent since the surety is never a party to the violation.

Customs efforts to solve this problem have concentrated on strict enforcement of petitioning time limits. Little has been done to address Customs' own unacceptable delays, many of which appear to be caused by lack of adequate clerical support. Delays continue to be a problem and are even escalating as Customs' enforcement efforts increasingly rely on selectivity and post-audit measures, coupled with intensive use of penalties to insure compliance.

To remedy this situation, Customs should establish a six month time limit for decisions on petitions submitted seeking relief from liquidated damages cases. If no decision is issued within that time, the petition should be deemed allowed. This change would enhance Customs' effectiveness in deterring future violations, and would assist surety's efforts to collect from the actual violator.

3. Protests Should be Timely Decided

The statute provides that Customs has two years to act on a protest. However, Customs is able to decide the vast majority of protests within one year. In practice, most can be decided within a few weeks. More complex cases requiring intensive analysis or investigation should be decided within the two year legal limit.

As we have already mentioned, surety's risk of loss escalates with the passage of time due to business failures and difficulties in reconstructing documents. Legitimate importers are severely harmed by unreasonable protest review periods because refunds of estimated duties to which they are found to be entitled are delayed, and companies are unable to accurately determine the costs associated with their current business transactions.

Customs also experiences problems when the protest review process falters. Backlogs accumulate, employees knowledgeable on the issues of a particular case are no longer available, paperwork gets lost, and Customs becomes inundated with status requests from frustated importers.

To benefit all parties, Customs should promulgate regulations to require that protests must be approved or denied within one year, unless the review period is extended for good cause and notice of the extension is given to the importer and surety. If Customs fails to act within one year, or within two years if the protest has been extended, the protest should be deemed approved.

4. Customs Should Proceed with Implementation of the Automated Surety Interface Program.

The Automated Surety Interface program should be implemented as soon as the necessary programming can be accomplished. Customs itself has described the system as a concept that could "significantly reduce the problems currently being encountered" by both Customs and sureties. Benefits to Customs include reduced manpower requirements, fewer delinquent receivables through early identification to sureties, and improved bond sufficiency paramaters. Surety benefits include information to project anticipated future liability and to determine potential bad risks.

Public concerns regarding ASI center on two isues:

1. Importers and brokers are concerned that release of certain data to the sureties will compromise proprietary business information.

2. Sureties are concerned that ASI will not provide legally acceptable data usable for determining the authenticity of claims, and that Customs will unreasonably decrease surety's response time and demand payment virtually by return mail.

Customs addressed these concerns in a Federal Register notice dated March 1, 1988 and modified the data elements being provided as part of the interface. Some sureties assert that, as a matter of law, they are entitled to all information which Customs possesses since they are a full party to the commercial transaction. Customs acknowledged this position in part, agreeing to provide certain data elements regardless of a claim, and other data elements after a bill has been issued. Customs also restated its intent to improve rather than frustrate the dissemination of necessary data and to enhance the quality of information being made available to sureties.

Customs should proceed as quickly as possible with implementation of the program while continuing to work with importers, brokers, and sureties to educate them on the benefits of ASI. Customs should also seek to provide surety with expanded pre-bill information while insuring that adequate safeguards are in place to prevent the unauthorized disclosure of sensitive information.

5. Customs Should Implement Procedures for Centralized Filing of Continuous Bonds

Customs bonds are either single transaction bonds or continuous bonds. Single transaction bonds are filed with the entry paperwork with which they are associated. Continuous bonds, which can cover thousands of transactions in several ports of entry, are currently maintained in the district in which they are submitted. As we mentioned earlier, Customs plans to require all continuous bonds to be submitted to the National Finance Center along with a cover letter from the surety attesting to the fact that a copy of the bond is on file with the surety or its claim-handling agent.

This new procedure will give sureties more underwriting control and will guarantee that sureties are aware of bonds filed by customs brokers. Customs will benefit from the new procedure through reduced paperwork and better control. Customs should take steps to implement centralized filing as soon as possible.

6. Legislation Should Be Enacted to Require Bonds on All Transactions Where Bonds Are Currently Required by Regulation

Customs transactions have been secured by surety bonds since at least 1894. Nonetheless, bonding is required by statute in only three situations. Surprisingly, none of the three statutes requires bonds for the filing of entries. However, the Secretary of the Treasury has been empowered by the Congress to require bonds by regulation on all importations as may be deemed necessary to protect the revenue or to insure compliance with any provision of law or regulation.

The use of bonds, most of which are secured by corporate sureties at nominal cost to the importer, has enabled the Customs Service to protect the revenue and insure compliance with federal regulations while keeping the government's administrative costs low. Corporate sureties are uniquely situated to assess the financial worth and reliability of individual importers, and to enforce payment or performance under the bond contract.

Importers and brokers endorse the bond system, and overwhelmingly prefer private sector administration of the system to various alternatives proposed by the Customs Service over the years. Corporate sureties' expertise in underwriting risks enable them to protect the government from substantial but unpredictable defaults, at low cost to the public.

The Congress should enact legislation to codify an existing practice and to require bonds on all Customs transactions, except those transactions for which bonds are not currently required by regulation. Such a law would not be without precedent. A similar concept exists in the Miller Act (49 Stats. 793, chapter 642), which requires that contractors on certain public works furnish a bond for the protection of labor and materialmen. The Customs bond system is vital not only to insure collection of duties and taxes on imported goods, but also to enforce 400 laws and regulations administered by U.S. Customs for 40 other agencies.

7. The Use of Simplified and Standardized Penalty Mitigation Guidelines Found in the "Option 1" Approach Should Be Expanded

Customs has developed a highly efficient method of resolving liquidated damages claims arising from entries that are filed late. Because late filings occur frequently and are in the nature of "parking ticket" violations, Customs has established an "Option 1" procedure whereby violators can pay a predetermined mitigated amount based on the number of days late and an "interest" charge on the past due duties. "Option 2" is of course the normal petitioning process whereby importers can argue that no violation occurred or that the "Option 1" amount is incorrect.

The use of this simplified procedure eliminates the need for importers and brokers to file lengthy petitions and for Customs officers to review petitions and issue decision letters. The predetermined mitigations also eliminate inconsistencies in penalty assessments that can occur when each case has to be reviewed on the merits of the petition.

Late filing claims are one of four or five types of violations that form the prepondernace of liquidated damages claims against surety. Many of these are high volume but routine claims that are typically the result of simple mistakes or ordinary negligence on the part of the importer or broker.

Customs should identify additional types of cases which are suitable for an "Option 1" approach and implement new guidelines for mitigating these cases. For example, claims involving failure to produce missing documents, failure to redeliver merchandise not legally marked, and failure to export or destroy merchandise entered under a Temporary Importation Bond appear to be good candidates for "Option 1" mitigations. Benefits to Customs would include shorter processing time, lower staffing needs, and reduced backlogs.

8. Surety Should Be Involved in the Development of Paperless Entry Procedures

Customs is developing paperless entry procedures whereby hard-copy documentation will not be filed for most entry transactions. In fact, modified paperless procedures are already being tested in some ports today. This progressive program closely ties in with the overall design of the Automated Commercial System, including the Automated Surety Interface, Automated Broker Interface and Automated Manifest Interface.

We have already mentioned today surety's right to information and its need for authentication of claims. Paperless transactions, in the form in which they are ultimately envisioned, may affect surety's ability to gain access to documents and information for this purpose. Consequently, surety should have the opportunity to comment on the paperless tests currently underway and should play an integral role in the development of applicable procedures and regulations.

9. Customs Needs More and Better-Trained Personnel to Settle Penalty Claims

Customs' problems with inadequate staffing and guidance for field personnel are well documented and have been the subject of public comment. These same problems affect sureties, particularly with regard to the settlement of liquidated damages claims.

Customs efforts to automate the penalty process should be applauded, as this important area has traditionally required intensive clerical support for filing, typing, photocopying, paperwork routing, and tickler file maintenance. The Fines, Penalties & Forfeitures module of the Automated Commercial System is crucial to the success of Automated Surety Interface since data on liquidated damages claims is a major element of the system.

However, the ASI test program revealed that much of the data in the system is incorrect, either because the status of cases has not been updated due to lack of clerical staff, or because the status codes and other key information have been input wrong. In some districts, it may take several months for petitions to be associated with case files, and even longer for the system to be updated to reflect that a petition has been filed. Automation of the penalties office is essential, but the system is ineffective if staffing levels are too low to maintain it.

Penalties office personnel need better guidance in matching penalties to the degree of culpability and the seriousness of the violation. The following example illustrates the need for a more reasonable approach to claims settlement.

Surety received a demand for late entry filing where the importer was bankrupt. The surety paid $50.00 in accordance with the normal "Option 1" guidelines. However, some confusion arose over the time period allowed for surety's response. The notice stated that surety had 60 days to pay. The district office, following provisions in the regulations, allowed only 30 days. But the surety was aware that Customs had recently changed its procedures to allow 90 days. The district office cashed surety's check but disallowed it as settlement of the claim, even though the money was deposited within 90 days. Customs is now demanding over $10,000 in settlement of this claim involving a duty free entry filed one day late where the harm to the government was negligible.

10. District Offices Need Clear Guidance on Claims Involving Other Federal Agencies

District penalties offices need better guidance on the procedures for reviewing and mitigating claims involving the enforcement of other agency requirements. Because agreements are negotiated independently with each agency, processing guidelines vary. With some agencies, the other agency may recommend a penalty while Customs has final decision-making authority. With other agencies, Customs is bound by the other agency's decisions. However, paperwork often goes awry, leaving the petitioner in doubt as to the settlement of a claim. For example, one surety recently received a notice from the Environmental Protection Agency demanding payment of $35,000. One month earlier, the surety had received notice from Customs that the same case had been cancelled in full.

Chairman PICKLE. Mr. Sterrett, do you have a statement?

Mr. STERRETT. I am just accompanying Mr. Schaffer, sir.

Chairman PICKLE. We will put your statement in.

Let me ask a few questions, and we will see what the other members might have.

In the Miami Free Trade Zone, you make the statement that free trade zone, growing and expanding both the volume and personnel, but as to the need and the growth, the staffing is becoming less and less; is that a problem you have been facing constantly?

Ms. LEIVA. Yes.

Chairman PICKLE. Speak louder into the microphone.

Ms. LEIVA. I think in our case we have been very fortunate in the sense that we have other customs operations physically taking place within our facilities.

That provides us with the physical presence of U.S. Customs, but I would say 90 percent of all the foreign trade zones in the United States do not have customs physically present in their facilities.

Chairman PICKLE. Now, under your audit inspection program, the zone operator has sole responsibility of operating that zone territory. Apparently from your testimony, the zone operator's bond is pretty heavy and in 1987 your zone operator in Miami had 70 claims against the operator for a total of $1.2 million.

That seems like a very large sum to me. Is this a normal type of procedure that is developing now, to have that many claims against the operator?

Ms. LEIVA. No. It is not normal. The problem is exactly the same subject that the gentleman was mentioning. The claims sit there and wait forever and sometime one person wakes up and sends all the claims at one time because they were just sitting there and waiting.

Another thing is that, although the claims were over $1 million, I don't think we paid more that $5,000 or $6,000 in actual penalties.

Chairman PICKLE. Well, if the total amount in liquidated damages is in excess of $1.2 million, that means you have to spend an awful lot of time on having claims rather than processing goods. That is what we want to try to prevent.

Ms. LEIVA. Yes.

Chairman PICKLE. You have made some recommendations, about six or seven of them. Have you made these recommendations to Customs? You list here six different recommendations. Have you made those to Customs?

Ms. LEIVA. Yes, we have.

Chairman PICKLE. In writing or verbal?

Ms. LEIVA. Both.

Chairman PICKLE. Both?

Ms. LEIVA. Yes.

Chairman PICKLE. What response have they given you?

Ms. LEIVA. Not much. Much of the problem you have in dealing with Customs at our level, you have so many levels of authority, you never know where things stand or where they die. The maximum we can deal with technically is the director at our level. You are talking five or six levels up.

Chairman PICKLE. You don't know who really is to give the final word?

Ms. LEIVA. That is correct.

Chairman PICKLE. Have you received any response from Customs on these specific recommendations?

Ms. LEIVA. No, sir.

Chairman PICKLE. All right. Thank you.

Now, Mr. Bassett, the AOPA makes some strong statements against Customs in several categories, and I think the nearest you come to just outright criticism is by saying that Customs Service is in need of oversight. It is not out of control, but it is far too overzealous.

Now, you list several things that you think are unreasonable. The photo pilot certificate is one example. Why is it an unreasonable request by Customs to require each pilot to carry one? Why would that be a bothersome thing to you?

Mr. BASSETT. It is not bothersome necessarily to us. It is more an issue that the FAA wouldn't be able to manage. That is the primary concern we have. They have, in their Oklahoma City office, a number of areas that they have difficulty managing. And this would be something else we feel they wouldn't be able to manage.

Chairman PICKLE. Why would it be unreasonable to say to operators, give us 1 hour's notice before you are going to cross a border? Admittedly, there would be places where there wouldn't be phones and there would be difficulties to make communication, but as a general rule, why would that be a harsh requirement by Customs?

Customs is trying to determine who is going to be crossing the border. What would be a better way to handle it? Could you tell me?

Mr. BASSETT. Exactly. We understand that from their perspective, it is not a bad request. It would be great, but the problem with the request is more of an ability to comply with the request rather than the request itself.

Chairman PICKLE. Well, I recognize that complying with the request would be a problem, but this is an effort just to try to keep a tab on the planes crossing. I don't know why it would be a difficult requirement per se on administering this rule.

I think it is difficult and I think that ought to be taken into consideration. However, I don't know why a plane is accosted and forced down, as was the case in Miami, where the pilot was absolutely innocent. The pilot's plane was flipped over by the Black Hawk and all he could do is get up and the gun is pointed at his head. I understand the pilot was just going out for an afternoon spin and his plane was completely destroyed.

What is the procedure? Does the government make that pilot whole? Does the Government pay for any expenses if a plane is destroyed or dismantled? Does Customs walk off and say, sorry, I have the wrong person or I didn't find anything, put your plane back together again? What is the procedure?

Mr. BASSETT. Pretty much the answer is yes. Customs has the authority to go in rivet by rivet, if they choose and I would like to answer a previous question also but Customs has the authority to go in and either dismantle the aircraft completely, take the wings off or, if in the example of Mr. Viero down in Miami, destroy it, the answer is, it is solely the pilot's responsibility to pay for that plane and in fact this was an aircraft that he owned.

Furthermore, if in fact Customs dismantles the plane, and we are not normally airframe and powerplant mechanics, we don't put airplanes back together to make them air worthy. We hire somebody qualified to do that. The expense of that would also be borne by the innocent victim.

Chairman PICKLE. In general then, the government does not reimburse for damages or make that pilot whole for any damage that occurs?

Mr. BASSETT. No, sir.

Chairman PICKLE. It is the same procedure that government just will not be responsible for its employees or agents, whether it is IRS or AOPA, or whether it is Customs. I notice in the correspondence when the pilot who was the injured party wrote and asked for reimbursement Customs kept saying, "we understand, we know you want to stop drugs and we know you support the Vice President's program", but they never did say, Customs wants to pay for anything.

They in effect have not paid for that plane damage; is that correct?

Mr. BASSETT. That is correct. The response is pretty much have a nice day.

Chairman PICKLE. My time has expired. I will yield now to Mr. Shulze.

Mr. SCHULZE. Thank you, Mr. Chairman.

Mr. Bassett, I would ask that you go into a little more detail. First of all what are some examples of what you believe is harassment and illegal or undue confiscation? Provide us with other material, if you have it, on specifics. If you would get me a few more specifics now, I would appreciate it.

Mr. BASSETT. In terms of—are you dealing with operating procedures with respect to us, or actually the airplanes going?

Mr. SCHULZE. In your testimony, you said there was a great deal of harassment. I want to know what you mean by harassment. I want to know whether it is deliberate or whether it happens once a day or once a year. It is easy to say we are being harassed by Customs. If you are, we want to know it and stop it. If you are not, and you are just, and I realize that your role is that of an advocate, so that you are presenting their best position. So I would like to know a little more specifically what you mean by harassment and have some examples.

Mr. BASSETT. First, we do have some specific examples and I am going to ask that Gail who has been working for the past year with the Customs people with this problem in our organization respond to your specific questions. But in terms of with respect to, yes we are in an advocacy position and while we have many specifics, we don't have names attached to them for the obvious reasons.

They are members who have contacted us and told us of problems, but that is about as deep as we are permitted to go. If I may turn it over to Gail.

Ms. LEWIS. Good morning, sir. Now, we have tried to solicit the support of our members to come before the Congress, to come before Customs decisionmakers and they have refused.

They are intimidated and they are afraid. Their businesses, their families, their livelihoods in many cases depend on the international travel. They can't afford to——

Mr. SCHULZE. I have to say that it doesn't do us an awful lot of good for you to just sit there and say they won't because they are intimidated. You have got to give us some examples and, if there are people who are intimidated, we will be happy to take their testimony in private or meet with them off the record if they will give us examples and specifics and not just say in generalities that big mean old Customs is wrong.

You know, our role is oversight on Customs Service, and if you think somebody is going to intimidate these individuals, that is our role, not Customs' role. There is nothing to be feared by testifying before this committee, because I will tell you, we will be absolutely sure there is no retaliation.

So we cannot legislate in a vacuum and we want to do what is right. We realize there are problems with drugs and I am a hard liner on drugs quite frankly. If there are errors made that is a shame, and we should pay for it.

Customs should reimburse the man you spoke about for the plane and the resulting financial problems. But I would rather have 10 of those accidents where, hopefully, nobody was injured than let one drug smuggler through. I take a fairly hard line. I want to have examples of why they are doing wrong. I want you to give them to us so that we can make corrections.

Otherwise, as an advocate, I can understand your coming in and saying we want more freedom but there is not an awful lot we are going to do about that.

Ms. LEWIS. We can bring——

Mr. SCHULZE. I have taken a lot of your time. Go ahead.

Ms. LEWIS. We can bring people to you to talk to you. We have people that have come forward and volunteered with a guarantee of protection by you, sir, and by the chairman.

Mr. SCHULZE. You will find Chairman Pickle and I will be happy to meet with these people and talk to them and we will do everything we can to see that the information is protected.

Ms. LEWIS. We can provide that. We can provide example of not only that kind of—that is not what we consider harassment. That was obviously a mistake by Customs. They destroyed a piece of property. The other kind of harassment that we are very concerned with are the daily examples of harassment that our people are forced to sit on ramps in the freezing cold in the winter for 2 and 3 hours at a time and then slapped with a $5000 fine because they let a passenger go and use a restroom facility. Daily harassment——

Mr. SCHULZE. Can you send us details on the specific incident where this happens and the names of the Customs people involved?

Ms. LEWIS. We certainly can.

Mr. SCHULZE. That is the kind of information we want.

Ms. LEWIS. In all honesty, our biggest problem that we call harassment is due to inconsistent policies in the field. People who travel internationally return to one Customs facility, are told how to fill out the paperwork by the agents at that facility. They go through an inspection, they think they know what to expect and the next time they come back though another facility, they feel prepared and have their paperwork filled out and all of their luggage is packed so it can be easily inspected, there are not things lying around inside that make it difficult for an inspector to evaluate the situation. These people are harassed for filling out the paperwork incorrectly and for leaving the aircraft——

Mr. SCHULZE. Describe that to me. Does somebody berate them and say, you stupid sob, why did you fill this out incorrectly? Or do they say, I am sorry, sir, it is not filled out the way we would like it filled out?

Ms. LEWIS. I think, first of all, I want to identify the fact that there are a lot of Customs professionals out there who treat our international travelers, people arriving, with respect and dignity. There are far too many that we hear about and that we can identify who treat them with disdain, who treat them very poorly, because they are suspects.

The Customs field or Customs national policy is that anyone arriving from an international port is a suspect. We automatically have good reason to assume that you are transporting and delivering illegal drugs and contraband into this country. When Customs officials meet with people who are prepared, who are trying to work with them and offer to help them and dismantle their aircraft and so forth, they turn on them and treat them with disdain for trying to get in the middle of their investigation, trying to hamper them by offering to help.

Those kinds of things are what we talk about as daily harassments. Having filled out the paperwork prior to arriving, as they were told to do at another facility, and then the Customs officials spending 30 minutes telling people that that is not the way it is done. We won't accept that. And forcing passengers and all the luggage to remain outside or in the heat or in the cold until the paperwork can be filled out; not allowing the passenger inside the facility, those kinds of things, in weather conditions that are less than comfortable, those kinds of unreasonable and unrealistic things.

Mr. SCHULZE. Are there patterns of this? Are there specific officers who do this? Are there some who have some problems and that we should weed out?

Ms. LEWIS. I think there are not only specific individuals, but we have identified specific facilities where the overall attitude of the personnel there is poor.

Mr. SCHULZE. Again, we would like very much to have this specific information. We will try to verify it and we will send our people out. In fact, maybe some of us will go out and just drop in on some of these installations.

So, I think it would be very helpful if you would provide us with examples. Or if you want to do it in a manner which is not public, then you might just meet with the chairman. I think that we can do that.

Ms. LEWIS. We appreciate that.

Chairman PICKLE. Ms. Leiva, you said that Customs is expecting you to do their job. Would you be a little more explicit?

Ms. LEIVA. Yes. For example, we have companies operating in the zone and we know that a company is either smuggling goods, or we go and do a physical inventory and we know the merchandise is missing and the company is trying to get away, and we know that they have a store in the city, and we call Customs and say, please help us.

They said, I don't have the time. Maybe when we find out what the discrepancy is, you will pay the penalty. That doesn't help us, because we are not committing the crime. We want the people committing the crime punished. This company disappears and we will never find them again.

Mr. SCHULZE. You find they are unresponsive to your requests for assistance?

Ms. LEIVA. Yes.

Mr. SCHULZE. When you are actually reporting a violation of the Customs law they either ignore it or say, we will take care of this at a later date, but apparently are very unresponsive?

Ms. LEIVA. Yes, they are. I understand they may have shortages and they have other matters that are very important for them. I can't tell if they are really after a very big seizure or something like that, but we need that kind of help, because otherwise, we can't enforce the law. We can't tell the companies that if they break the law, they are going to be punished.

We get punished by paying the penalty.

Mr. SCHULZE. There is something incongruous about that. I thank you, Mr. Chairman.

Chairman PICKLE. Mr. Flippo.

Mr. FLIPPO. Thank you, Mr. Chairman.

Mr. Chairman, I think you and Mr. Schulze are certainly providing some good leadership in holding these hearings, because I think the testimony of our witnesses today is very important. I am impressed by the testimony that we are having today about the harassment, intimidation of people, and the lack of responsiveness that is coming. I think that is something that every member of this committee is very, very concerned about.

We ought to encourage the pursuit of this, Mr. Chairman, because we can't simply tolerate that type of action.

Let me ask, what type of investments do you make at the Miami zone area to ensure the—what type of security investments do you have there to ensure the inventory control, that there is not abuses going on?

Ms. LEIVA. To begin with, we have our own security force. We are, first of all, a private corporation, which is a rather unusual situation for a foreign trade zone, not only the United States, but around the world. We have our own staff. We hire the security people to teach them how to deal with Customs paperwork, just a regular guard won't do.

We have computers to allow people in and out of the zone. Television cameras, microwave fields, alarm systems, et cetera.

Mr. FLIPPO. I see.

Let me ask in the surety area, here, what is really the role of the surety in the import-export business? What risks and responsibilities do you assume as a surety?

Mr. STERRETT. The surety guarantees the revenue of the United States and the performance of the requirements under the regulations that the importer must achieve.

Mr. FLIPPO. Well, how do you set your rates? Are your rates regulated by any State or Federal authorities? How do you assess the risk? How do you set your rates, and are you regulated?

Mr. STERRETT. Yes, the sureties are regulated, regulated by each of the States in which they are licensed, as well as by the U.S. Treasury. The rate-setting process is a very complex one. While the American Surety Association of America recommends certain rates, in fact each company must evaluate their own experience, their own procedures, in setting their own rates.

Mr. FLIPPO. Well, the Customs practices apparently have a significant impact on your business. Is there information that Customs should provide that could improve your risk assessment that you are not currently getting? What is the essence of your problem with Customs at this time?

Mr. STERRETT. I think I would say this: The Customs Service has a very complex task. They have thousands of employees that are trying to do their job. Inherently in such a large organization, the performance of the job becomes very complex.

Our problems seem to relate to situations where Customs delays in acting, not when they act quickly, but when they act with a significant delay in time. The importer needs some degree of certainty with regard to his import transaction.

He needs an understanding of what his costs are, and that includes his Customs duties. The surety needs a quick response to those same questions in assessing its own obligations.

Mr. SCHAFFER. Congressman, if I might amplify the need for information is critical so that the surety can make a proper judgment as to whether or not to provide a surety contract or a bond to a prospective importer. In many cases, failure, as I noted before, to provide adequate information to the surety doesn't permit an opportunity to properly execute his own responsibilities and, therefore, surety incurs significant losses that could have been prevented with proper information flow.

We have been working with the Customs Service to develop an exchange of information in an automated fashion, and we are encouraged that program may lead to some substantial improvements.

Mr. FLIPPO. Thank you.

Thank you, Mr. Chairman.

Chairman PICKLE. Let me, in connection with that, if the gentleman would yield before your time us up? I notice, Mr. Schaffer, you said your testimony, in Los Angeles, one Customs broker converted to his own use about $1.5 million. The Customs never notified the surety that this was going on and continued violation was taking place.

It was 6 months before you received notice. Now, obviously, that would seem to be a very unusual delay. Is that normal, not size necessarily, but does that happen regularly?

Mr. SCHAFFER. In ports where they are particularly overburdened, there could be significant delay. I think that is an exceptional case. We have other examples for the committee.

Chairman PICKLE. When you said the claim ought to be filed immediately, that is what the law says. Immediately doesn't mean anything except you do the best you can.

Mr. **Schaffer**. We would like to see immediate mean something more specific than that.

Chairman **Pickle**. Does Customs have any time limit for settling the claim if Customs files a claim for liquidated damages? Could it linger on and on, if it is not settled immediately? Does that happen?

Mr. **Schaffer**. It can go on for as long as 6 years, and cases have lasted that long in terms of resolution.

Chairman **Pickle**. All right. Thank you.

Mr. Rangel?

Mr. **Rangel**. Thank you, Mr. Chairman.

Mr. Bassett, I agree with Congressman Flippo that if there are violations of the pilots or the rights, that this committee would want to look into that. I am a little surprised to see that I think your testimony is that where damage is done to a particular aircraft, that the Federal Government, if they have been negligent that they reimburse the pilot or the owner——

Mr. **Bassett**. Yes, sir.

Mr. **Rangel**. Is that what you said?

Mr. **Bassett**. That is correct.

Mr. **Rangel**. That is a matter of policy, our Government doesn't hold themselves responsible for unlawful destruction of aircraft?

Mr. **Bassett**. In my view, that shouldn't be a matter of policy. In practical terms, that is the way it has been.

Mr. **Rangel**. Well, what I don't understand is that your owners and pilots are law-abiding taxpayers, and yet, Ms. Lewis said they don't come forward because they are afraid of being harassed. By whom, by our Government?

Ms. **Lewis**. Yes, sir, by the U.S. Customs Service staff people.

Mr. **Rangel**. So, you are saying, in addition to this abuse of the pilots and the owners of the aircraft, that they are intimidated, that they can't even go to their Congressman or their elected officials and complain about this, because they would be subjected to further harassment?

Ms. **Lewis**. That is correct.

Mr. **Rangel**. That is why you can't give us the names of these people that have been harassed?

Ms. **Lewis**. We have the names. If we can assure them confidentiality——

Mr. **Rangel**. Confidentiality?

Ms. **Lewis**. Protection from ramifications in the field.

Mr. **Rangel**. And the ramifications you are talking about, do you have examples where people have complained and Customs have even acted in an unlawful, overzealous manner, and they have made the complaint and they have been subjected to harassment?

Ms. **Lewis**. Yes, we do.

Mr. **Rangel**. What names do you have where a person has already been exposed to this type of conduct?

Ms. **Lewis**. Before I answer that, I would like to say that in those cases where we have had complaints brought to the attention of Customs headquarters, and they have then received additional harassment, Customs headquarters has acted very quickly and very effectively in resolving the problem in the field, in most cases.

Mr. RANGEL. So, you mean double harassment has worked to the benefit of the pilots or the aircraft owner.

Ms. LEWIS. I am sorry, sir, could you repeat that?

Mr. RANGEL. You are saying if they have been harassed twice and it is reported to Customs, they have responded in a favorable way.

Ms. LEWIS. Customs headquarters has responded favorably, yes.

Mr. RANGEL. This hasn't gotten out, if you report harassment to headquarters, the Government responds in a favorable way, has it?

Ms. LEWIS. We are trying to get it out. The Customs Service is extremely short-staffed. They can't afford to move people, and they can't afford to get rid of people unless it is an extreme situation.

Mr. RANGEL. Can you give us the names of people who have been harassed who have reported it to the Government, and have been further harassed?

Ms. LEWIS. Yes, sir, we certainly can.

Mr. RANGEL. Do you have the stores here now for your testimony?

Ms. LEWIS. No, sir, but I can give them to you.

Mr. RANGEL. And you testified, Mr. Bassett, that there is a problem with owners or pilots getting the photo identifictaion. What is the problem with that?

Mr. BASSETT. The problem, sir, is going to be the implementation by the FAA.

Mr. RANGEL. If the Federal Government has asked for an ID, what is the problem in getting the ID?

Mr. BASSETT. From our perspective, none.

Mr. RANGEL. It is your job. If they say that is the reg, to get it. The implementation, if there is a problem, we deal with it. But you don't have any problem in getting the ID and the photo?

Mr. BASSETT. No, sir, if they can do it, we will be happy to comply.

Mr. RANGEL. Now, you are the owners and the pilots. Does this deal with leased vehicles; that is, that the owners lease out these vehicles to pilots to do whatever they want to do?

Mr. BASSETT. Yes, it does.

Mr. RANGEL. Have you any idea as to what percentage of drugs coming into the United States through private aircraft that are leased by owners that are not involved to pilots who engage in criminal activities?

Ms. LEWIS. No, sir, we have asked the Customs Service to help outline criteria that they use to identify suspects, and have given them a successful rate to try and determine how we can advise our members to protect themselves.

They will not provide that kind of information to us.

Mr. RANGEL. So, you find it difficult to set up rules as to how owners of aircraft can detect whether or not they are leasing their planes to criminals that engage in international drug trafficking. You need the Federal Government.

Ms. LEWIS. We are working on that very problem.

Mr. RANGEL. Forgetting our Government, since they are in the business of harassing you people, what are you doing to protect yourselves against indictments, that is the owners, when you lease a plane out and you find that these people are, or some of them, are really engaging in drug trafficking. What rules do you have?

Ms. **Lewis**. We are advising our members who are leasing aircraft to renters that they protect themselves by not renting to people that they don't know, that they not rent to people who are not established citizens in a community, that they not rent to young people——

Mr. **Rangel**. I see. Do you have a set of written rules that we could have here to see exactly what you have done to fulfill your responsibility to prevent your vehicles from being used by criminals?

Ms. **Lewis**. We can provide you copies of articles that we have published in our monthly magazine.

Mr. **Rangel**. I am talking about rules that guide to serve the owners where clearly, some of the owners know who they are dealing with, and I assume that you would not want to give them any aid and comfort, so in order to protect your association, you have to have some rules, even if Customs is not cooperating, to protect your owners that are really operating within the law. Or to put it another way, to make certain that you are not representing owners and pilots that are clearly violating the law.

You have to appreciate that the things that you are objecting to here today could be treated or could be supported clearly by criminals, and I know that is not your intent.

So, my question is, what are you doing to satisfy this Member of Congress and those of us who are concerned about the abuse of the privilege of airline licenses—or aircraft licenses—what are you doing so that the heavy hand of Government does not fall in the category of harassing?

Mr. **Bassett**. Mr. Chairman, all we can do is what we have been doing since the beginning of this problem, and that is just a constant educational process with our membership through the publications that we have.

Mr. **Rangel**. Well, Ms. Leiva said that they don't rent to people that they don't know, and don't rent to kids. Now, you have to admit that our Federal Government has a higher responsibility than to give those guidelines, and we have to place criminal liability on somebody, and those are hardly the type of regulations and rules that would make anyone liable.

Ms. **Lewis**. We think the answer is not necessarily to change the rules. From the information we get from Customs, we can identify what some of the high-risk people are, what we think is the real answer, the real solution is to work with Customs and the Federal Aviation Administration to develop policies and procedures and requirements that are reasonable with the system.

Mr. **Rangel**. Do you have recommendations?

Ms. **Lewis**. We most certainly do.

Mr. **Rangel**. Do you have them with you?

Ms. **Lewis**. We have outlined them in our testimony. We can provide you with a list.

Mr. **Rangel**. How long have you been with this Association?

Ms. **Lewis**. A little over 2 years.

Mr. **Rangel**. And you, Mr. Bassett?

Mr. **Bassett**. Eight years.

Mr. RANGEL. Now, Mr. Bassett, how many cases has your association cooperated with the Federal law authorities in making sure that you got rid of some of the pilots and owners that were violating the law?

Mr. BASSETT. I am not sure that I have an answer to that.

Mr. RANGEL. Does any come to your mind?

Mr. BASSETT. Not offhand.

Mr. RANGEL. What would prevent criminals from joining your association and asking you to testify to restrict Customs from trying to do something about this serious threat to our national security?

Mr. BASSETT. Absolutely nothing. I mean, our process of membership requires that an individual be at least—hold a student pilot's certificate. We don't go beyond that.

Mr. RANGEL. I say this to you as a friend and concerned that Government not become overpowering in trying to reach a legal objective. That is, until such time as your association assumes some of the responsibilities as to what you will be doing to prevent the violation of the Federal narcotics laws, and these planes just coming across our borders, then you are going to see members leaning toward Customs or to the Drug Enforcement Administration.

You have to assume some responsibilities for the owners, for the pilots, and especially for members of your Association, and if you don't, then you should not be heard to complain that the Congress has supported a law enforcement regulation and law, even though I have to admit that in recent weeks and months, it appears as though there has just been an overzealousness, a political approach rather than a practical approach.

But as long as you are doing nothing, then the Congress doesn't have too much to work with, and I thank you for allowing your views to be heard to this committee today.

Chairman PICKLE. The Chair would want to interject this assurance to the witnesses. We are not passing judgment on whether you have done nothing or refused to have done nothing as an association; we would like to know what you have taken as steps to inform your members of what they should do and what should be expected of them.

I am not saying that you have done nothing, but we would like to know what you have said, and we would like to know what you are doing.

Mr. RANGEL. If the Chair would yield, I thought it was the witnesses who said they had not defined any set rules for their membership.

Chairman PICKLE. I wouldn't say that is not doing anything. My impression is that they have operated strictly by themselves and separate and apart from Customs. It is a two-way operation. I am assuming that you have made your wishes known to Customs, and you have always, also, made your feelings known to the members of your association.

Mr. RANGEL. I would like to retract then any implication that they were doing nothing. Ms. Leiva has indicated that they have written articles and advised the owners not to lease their planes to strangers or to children.

Mr. BASSETT. Mr. Chairman, may I respond?

Chairman PICKLE. Well, Mr. Chandler.

Mr. CHANDLER. I, as Mr. Bassett and Ms. Leiva know, am a pilot and a member of AOPA. I would like to suggest that, just like Congress, where we have had criminals indicted and found guilty, AOPA finds itself in the same position of being unable to exclude people because it is hard to tell them apart, but if you would like to go on a bit further, then I believe I could assure the gentleman from New York that just because they came here trying to protect innocent people from unnecessary harassment doesn't mean that in turn, they are trying to protect people who are guilty. That is certainly not this member's intent.

Mr. RANGEL. If the gentleman would yield, I agree with you 100 percent, and I really appreciate the analogy that you use. We do have criminals and convicts that have served in the Congress, and that is why we have the Ethics Committee and Rules, many of which don't work, but we are able to respond that we are trying to do something, and that was the question that I was really perhaps overzealous in trying to get an answer with, and I want to apologize to the Chair for having pursued it so rigorously.

Chairman PICKLE. I just want to make sure that the witnesses do not feel that we are censuring you for the operation of your own association. You may or may not have done a good job on that, and I am not passing judgment.

Mr. BASSETT. I don't feel that way at all.

Mr. CHANDLER. I think we need to get to the question of rules for an association like this. What potential is there? How effective would they be, what enforcement would you have on our membership? How would you know whether they obey rules or not?

I think this is worth pursuing.

Mr. BASSETT. Well, as you know, Congressman, our criteria in terms of membership is that an individual holds a pilot's certificate from the FAA. Beyond that, you are absolutely right. It could be any one of you that held a ticket, anybody in this room. We are not in a position to check backgrounds. Therefore, with respect to this issue, our role, and it is an advocacy role clearly, but our role is to do the best possible job we can of educating.

We have the vehicles and the resources to do that, and it is a constant, as you know, sir, by receiving the publications, it is a constant challenge and endeavor to continuously educate on the subject.

With respect to being able to apply rules, we can't do that. That is not our role, that is not what our membership pays us to do. They don't pay us to rule them. They do pay us to advise them; they pay us to educate and to communicate with them, and to the extent possible, we don't want people flying small aircraft, we don't want AOPA members out running drugs from South America into Florida.

And we take a very firm stand on that, but about the best we can do is take that firm stand and then attempt the process of education. We have no jurisdictional power, if you will, to put our finger on that person and do something about it.

Mr. CHANDLER. Have you met with both Customs and the FAA in the last several years on more than one occasion to try to be of assistance, or to advise them?

Mr. BASSETT. We have. We have met with both on many occasions, and not only on the development of a coalition, but to work on what Customs wants to do and how it is applicable to FAA, and if they can get it done, and more importantly maybe is a continuing dialog that we have both attempted to have and have had some success in having with Customs to try and help shape their policies so that members can comply with them.

And that is really all we are trying to do. We want to comply with Customs, we don't want to be violators. If one of our members is out there running drugs back and forth, we want Customs to catch them.

Mr. CHANDLER. What are the geographical locations where the harassment problems are worse? In the United States?

Ms. LEWIS. We have two specific sites in Florida that are the worst. Fort Lauderdale and Tampa.

Mr. CHANDLER. Are there other States where there have been problems as well?

Ms. LEWIS. The Southwest States also have some problems out there.

Mr. CHANDLER. Do you think this is more a matter of the personality of the individuals involved, the Customs official on the ground, or is this a Customs policy?

Ms. LEWIS. I think it is a little bit of both. I think it is the personalities that are required to do the kind of job they have to do. These people are, like any law enforcement agents, they have to be very self-confident and prepared to deal with a deadly situation.

You have to have those kinds of personalities in those jobs. We do know the Customs Service as a whole is very short-staffed and they do not have coordination between the field and the headquarters that is maybe necessary to keep the communication going and keep the oversight by Customs headquarters efficient.

Mr. CHANDLER. If I could make an observation, I have never had an occasion to be searched or experienced any of this on a personal basis, but I have visited Customs facilities. I have participated in Civil Air Patrol problems in cooperation with Customs, and I have tried to encourage more of that.

I think what Ms. Lewis is identifying here is the dilemma for Customs. On the one hand, you are dealing with grandma and grandpa flying the 172 in from Mexico, and if they brought a bottle of wine in, that would be racy for them. The next minute they are dealing with somebody who would take a life and never think a thing of it.

But the vast majority of the persons they deal with are those innocent Americans who would never commit a crime and never even think of it. I am very quick to be critical when we see what appears to be some abuses of power. I think they have been there.

At the same time, as Ms. Lewis has I believe, so accurately stated, they are in this awful situation where they don't know who the heck they are dealing with from one minute to the next.

I would like to say as a member of this fine organization, I know you have worked and worked very hard to protect innocent people. I know you are also trying to do your best to help Customs with those who aren't. So, frankly, I would say keep up the good work.

Mr. BASSETT. Congressman, thank you.

Chairman **Pickle**. Thank you, Mr. Chandler, also for the leadership you have given to Congress in the area of Civil Air Patrol and suggestions of worthwhile activities, because you have taken a lead in the Congress on that. We appreciate that.

Now, Mr. Anthony.

Mr. **Anthony**. Thank you, Mr. Chairman.

In your testimony, Mr. Bassett, you made reference to a piece of legislation that is presently pending in the Congress. It is my understanding that there will be an innocent owners provision contained in the omnibus drug bill which will probably go to the House of Representatives before this week is out.

The provision that came through the Trade Subcommittee and was discussed in the full committee is in the process of being hammered out in negotiations with Merchant Marine and Fisheries, which originally had a much stronger provision, yet the Judiciary position is the one you supported in your testimony.

It is my understanding that compromise language will be adopted in this fast track legislative mode. The one area that probably will not be addressed at this time will be the damages. So, you may continue to suffer from overzealous, and rude treatment, and in proper methods of boarding and inspecting aircraft.

Congress will address the need of innocent aircraft owners and pilots for expedited processes to have their cases heard. If such measures are not sufficient I recommend your association return to the Congress for additional legislative amendments to address the compensation section.

I share the viewpoint of Mr. Chandler that, you really are impaled upon the horns of a dilemma, in terms of the areas in which you must respond.

At the moment, the Congress is responding to a national policy of stopping the illegal flow of drugs into this country. All of you are involved in the commercial aspect of overlapping enforcement so we must sort through the wheat and the chaff, and make sure that both policies are adequately pursued.

Innocent victims are not aggrieved from our Federal Government that is trying to produce a safer America for our inhabitants. So, in terms of the illustration you mentioned in your testimony, dated 1987, or 1986, I am particularly interested in more current episodes to determine whether there has been any shift over the last 24 months.

The general question would go to each of the witnesses and their testimony, of whether there has been any noticeable change in the operation of the Customs Office over the last 24 months, and whether or not that trend is a disturbing trend versus a positive trend.

Quickly, running through your testimony, it appears that according to the witnesses not here, Customs took a 1978 law and revised it with regulations contrary to the original intent of Congress.

Each of you has testified, but if you have any additional thoughts or information in terms of where you see the trend line occurring over the last 24 months, I think that would be very helpful to us, because we will have, in September, the head of the Customs agency to come in.

So, any additional information that you could give us in preparation for questioning the key officials, this would be your opportunity to make sure the record is complete. So, if you have additional trend-line information, I think it would be beneficial.

I yield back the balance of my time.

Chairman PICKLE. The Chair would want to observe before this panel leaves that when the committee sets out to make a review of the Customs operations, we did so because there has been no concise, organized review or oversight of that agency in a long time, years as far as I know. We set out to try to see how cargo and passengers are being handled, and we also made it clear that we were not trying to extend our jurisdiction over into the drug trafficking, narcotic problem.

These hearings inevitably come to the point where there is an analysis or a choice between that procedure, between cargo and passengers, and narcotics. I wish we could keep them separate and apart. We can't, because the narcotic problem is a serious and important question.

So, to the extent that question will arise in these areas, you can't separate the issues, and that is why we have to ask some questions sometimes that seem unreasonable. We are not making accusations that your organizational members on business are not doing a good job. But we do know that somehow the system, the Customs operations, are becoming clogged and are getting into terrible delays, and we know that the drug problem is tremendously difficult for our Nation.

We have to balance both. We are not trying to pass judgment on either. We are trying to get as much information and facts as we can. You have given us good facts and information. We will now pass that on to Customs to see if we can get something specific from them. So, we thank the panel very much for your testimony today.

Now, the next panel will be panel No. 2, and we are going to ask Mr. Donohue, who was not able to be with the first panel, if he will join us, representing the Customs and International Trade Bar Association, and if you will join us at the table; and the others will be Al May; Gary Taylor; Vincent Staunton; and then the Air Transport Association, James Landry; and DHL Airways, Dave Poling.

If you people and those accompanying you will come to the witness table.

We will allow Mr. Donohue, you will be the first witness representing the Customs and International Trade Bar Association; Al May, representing the United Shipowners will be next, and he is accompanied by Mr. Taylor and Mr. Staunton. And then we will hear from James Landry, senior vice president and general counsel of the Air Transport Association, Mr. Landry. And then the DHL Airways, Inc., Dave Poling. Where is Mr. Poling? There is Mr. Poling. And you are accompanied by Mr. Peter Hiebert?

Mr. POLING. Mr. Bob Farrell.

Chairman PICKLE. Okay. Mr. Donohue.

STATEMENT OF JOSEPH F. DONOHUE, JR., PRESIDENT, CUSTOMS AND INTERNATIONAL TRADE BAR ASSOCIATION

Mr. DONOHUE. Mr. Chairman and members of the subcommittee, I am Joseph F. Donohue, Jr., of the law firm of Donohue and Donohue in New York City, and president of the Customs and International Trade Bar Association.

Preliminarily, I would like to thank you, Mr. Chairman, for permitting me to testify out of order. I was on a plane at 7:20 this morning and off of the plane at 7:25 because of engine problems. So, I appreciate very much your willingness to hear me at this time.

The Customs and International Trade Bar Association consists of approximately 300 attorneys throughout the United States who practice and represent clients before the Customs Service and the U.S. Court of International Trade.

In the few minutes that I have, I will highlight some of the points made in my more detailed written statement.

In brief, we are experiencing an adversarial attitude in Customs in the area of enforcement and a decline in service in commercial operations. I will touch on three enforcement issues, namely Customs' attempt to redefine fraud; a tightening of the prior disclosure provisions; and the wide use of seizure under 19 U.S.C. 1592a(c). And then I will briefly address some important commercial issues.

In 1978, Congress revamped the major enforcement statute, 19 U.S.C. 1592. The statute set forth three levels of culpability: Negligence, gross negligence and fraud. While the term fraud was not specifically defined in the statute; it was clear when the law was passed that the common law definition of fraud was to apply.

While testifying on the amendment, Customs specifically indicated that intent to defraud the revenue would be necessary for a fraudulent violation. Despite that position taken in 1978, Customs has now proposed a rule which would change the meaning of fraud in section 1592 by eliminating intent, and make very little distinction between a negligent act and a fraudulent act.

We oppose that change, and urge that it not be adopted.

Turning to voluntary disclosure, we find that what Congress gave in 1978, Customs is trying to take back or at least cut back today. Voluntary disclosure allows an importer to advise Customs of a possible violation before a formal investigation is commenced, and thereby limit penalty liability. The procedure is designed to benefit Customs and the importer.

Customs gets unpaid duties and perhaps minimal penalties in connection with a violation that might not even have been detected, and the importer can remove the threat of a major penalty assessment.

Today, Customs frequently responds to a disclosure as if it has gotten a bad deal, and often denies that a disclosure is voluntary for some technical reason. As counsel, we have to caution clients that a voluntary disclosure is made with no assurance that penalty liability will be eliminated or minimized, and could lead to a full-scale investigation, culminating in a major penalty assessment.

In such a climate, the thought that a violation might not be detected becomes appealing. We think that this frustrates the purpose of the statute, and that Customs should look to what was the original intent and try to stick more closely to it.

Our final concern in the area of enforcement is Customs' widespread use of 19 U.S.C. 1595a(c) ASC to seize all sorts of commercial merchandise. I know this committee has heard much on this subject, and I will not dwell on it. While it is rather clear from the background of the statute that it was intended as a tool to interdict drugs, Customs has applied it in cases where section 1592, which has a full array of procedural safeguards, should be applied.

Section 1595a(c) should not be used as a convenient way for Customs to avoid procedural safeguards which Congress considered necessary in the penalty area. Our association has proposed a statutory amendment that would make it clear that seizures under 1595a(c) should be limited to drug interdiction, and we stand ready to assist your staff in working on this legislation.

Turning from enforcement to the areas of commercial operations, we find there has been a continuing decline in service. The expertise that used to be the hallmark of Customs, both locally and in headquarters, is declining markedly, as experienced personnel retire, resign or are cut back. The result is that it is difficult to get advice on matters such as classification, quota, and marking, and it takes months and sometimes years to get a binding rule.

In the meantime, an importer must conduct business with uncertainty. This is unsatisfactory at any time, but in an era of strict enforcement, an importer who cannot get such a matter resolved imports at his peril. As bad as things are now, they will get worse in January, when the harmonized tariff schedules, which will usher in the most significant changes in Customs classification in 25 years, become effective.

If rulings cannot be obtained expeditiously now, the delays will be unimaginable then. In the meantime, imports will continue, and while Customs has the power to resolve doubts in favor of the Government and let the importer take the issue to court for a final decision, that is not the best answer.

The problem must be addressed both locally and at the headquarters level, or we will be in for a real nightmare in January of 1989.

Another area of operations in which we are concerned is the area of automation as Customs moves toward the paperless entry. While we favor automation to help clear goods more rapidly and minimize paperwork, we hope that Customs will keep in mind that clearing the goods does not end the transaction.

Today, when duties are paid, the entries are stamped. When the entry is liquidated, a courtesy notice is mailed. When Customs proposes an advance in value or change in rate of duty, a notice of action is sent. The rules in the era of automation are still unknown, and we have several questions.

Will the importer get any document as proof of payment? How will Customs advise an importer that it disagrees with the classification or inform an importer that an entry has been liquidated? In what form will information which is now part of the entry package be sent to court when an importer challenges a Customs decision?

We don't have the answers, but we raise the questions now with the hope that Customs will consider them and seek the broadest input possible from the trading community before going too far down the road to automation.

We thank you for allowing us to share our concerns with you, and we are eager to work with your committee.

Chairman PICKLE. We thank you very much, and we are glad you got here in time to testify.

[The statement of Mr. Donohue follows:]

CUSTOMS AND INTERNATIONAL TRADE BAR ASSOCIATION

TESTIMONY ON BEHALF OF
CUSTOMS AND INTERNATIONAL TRADE BAR ASSOCIATION
BEFORE THE
SUBCOMMITTEE ON OVERSIGHT
OF THE
HOUSE WAYS AND MEANS COMMITTEE

PRESENTED BY
JOSEPH F. DONOHUE, JR., PRESIDENT
AND
PATRICK D. GILL, CHAIRMAN,
ADMINISTRATIVE PRACTICE COMMITTEE

The Customs and International Trade Bar Association welcomes the opportunity to present testimony to the Subcommittee on Oversight with respect to the administration and operations of the United States Customs Service. The Customs and International Trade Bar Association is composed of attorneys in private practice and government service who are located throughout the United States and who devote a substantial part of their practice to Customs law. The members are vitally interested in the operations of the Customs Service and regularly practice before Customs representing all segments of the international trade community, including importers, exporters and domestic manufacturers.

Our concerns regarding the overall operations and management of the Customs Service are greater than at any time in recent memory. Our main concern is with the commercial operations of the Customs Service and the serious deficiencies which have developed in that area. These include excessive preoccupation with enforcement efforts against commercial shipments at the expense of service to the legitimate needs of the trade community, discouragement of voluntary compliance and an undermining of the voluntary disclosure provisions of 19 U.S.C. 1592, attempts to redefine by regulation, amendments to the civil penalty provisions enacted by Congress in the Customs Procedural Reform and Simplification Act of 1978, P.L. 95-410, 92 Stat. 888, abuse of the seizure provisions of 19 U.S.C. 1595a(c) and a pressing need for amendment of that provision, general deterioration in service to the trade community resulting from cutbacks in personnel and insufficient funding, and the implementation of far reaching changes in the area of automation without sufficient interaction with all segments of the trade community regarding the impact of these changes.

I

The relationship of the Customs Service to the international trading community has become excessively adversarial.

The Association is extremely concerned with the degree to which the relationship between the Customs Service and the international trading community has become increasingly adversarial. We fully recognize that the Customs Service is a revenue collecting and enforcement agency and that there is an inherent potential for conflict between the primary objectives of the agency and the legitimate, free flow of goods in international trade. It is perhaps because of this inherent conflict that Congress must be ever vigilant in monitoring the Customs Service so as to ensure that a proper balance is struck between the statutorily mandated objectives of the Customs Service and the legitimate needs and interests of the importing public. In recent years, we feel that that balance has unduly tipped in favor of the enforcement objectives of the Customs Service to the serious detriment of commercial operations.

This trend has manifested itself in a number of key areas. It is common knowledge that Customs has made severe cutbacks in its commercial operations staff and increased its enforcement efforts. The diversion of resources to enforcement has been coupled with a conscious and deliberate public relations effort to justify the increased emphasis on enforcement by demonstrating results in the form of statistics on seizures and the imposition of penalties. The statistics generated are often inflated and fail to reveal that many of the seizures were made improperly or that the penalties were imposed on the most tenuous of grounds for infractions that are technical and clerical in nature. Worse, they are misleading. The cases are often settled by Customs for a small fraction of the claims, once the cases have been analyzed and the true facts brought to light.

The most unfortunate effect of all of this to both the government and the importing community is that the concentrated efforts on enforcement have tended to detract from efforts to encourage and foster voluntary compliance and cooperation. Indeed, the word "crackdown" seems to have replaced the word "cooperation" in the parlance of Customs administration.

The Association does not for one minute doubt that enforcement measures are sometimes necessary to ensure compliance with all applicable laws and regulations governing imports and exports of merchandise. However, we believe that there is a pressing need for a redirection of energy in the Customs Service so as to place primary emphasis on voluntary compliance, with enforcement as a necessary, remedial backup.

We would suggest that Congress, both through legislation and in its oversight capacity, has long encouraged the Customs Service to maintain this essential balance with a primary emphasis on voluntary compliance. Indeed, voluntary compliance has long been recognized as the hallmark of the success of the United States system of taxation in general.

Congressional intent in this area was most notably manifested in the Customs Procedural Reform and Simplification Act of 1978, P.L. 95-410, 92 Stat. 888 hereinafter "CPRSA." This legislation was the result of years of effort by Congress, Customs, and a broad based segment of the importing community in the United States. A major part of that bill consisted of amendments to the civil penalty provisions of 19 U.S.C. 1592. These amendments to a great extent were aimed at correcting the excesses in the form of monetary penalties, seizures and forfeitures which existed under the prior law. They also attempted to create procedural safeguards to prevent excessive and undue penalties for infractions due to negligence.

We regret that over the past several years Customs has embarked on what can only be characterized as a deliberate attempt to undermine and or circumvent the procedural safeguards of the CPRSA. Nowhere can this more clearly be seen than (1) in the recently proposed redefinition of fraud, contrary to the intent of the CPRSA, (2) in the attempts to undermine the policy of encouraging voluntary disclosures and (3) in the widespread and deliberate circumvention of the CPRSA limitation on the use of seizures by resort to the drug act seizure provisions of 19 U.S.C. 1595a(c). Each of these shall be discussed separately.

A. Proposed Redefinition of Fraud

On December 10, 1986, Customs published a proposed redefinition of the term, "fraud," which is patently inconsistent with the distinctions between fraud and negligence which were carefully carved out and enacted in the CPRSA. This proposal which appeared in 51 Fed. Reg. 44483 remains pending at Customs Headquarters.

The proposed redefinition of fraud is contrary to a long-standing administrative practice and to congressional intent in the enactment of 19 U.S.C. § 1592, as amended by the CPRSA. The proposed rule change to the definition of fraud as set forth in Appendix B(B)(2) of 19 C.F.R. Part 171 would alter this long-standing practice defining the term "fraud" under 19 U.S.C. § 1592 and would be in conflict with congressional understanding with respect to that definition. The statutory distinction between fraud, gross negligence, and negligence as set forth in 19 U.S.C. § 1592 resulted from amendments to that provision by the CPRSA. The statutory distinctions between the so-called degrees of culpability reflect recognition of a long-standing administrative practice by the Customs Service in the disposition of penalties asserted under 19 U.S.C. § 1592 prior to the amendments made by the CPRSA.

The proposed rule change would substantially alter the definition of fraud and eliminate the distinctions between negligent activity and fraudulent activity. The proposed rule change merely provides that the false statement, act, or omission "was committed (or omitted) knowingly" as opposed to having been done by mistake or clerical error. Under the proposed rule change fraud could well become the threshold violation with negligence or gross negligence present only if additional facts establish less than reasonable care or wanton disregard of relevant facts and the offender's obligations under the statute. Furthermore, it would be easier for Customs to establish fraud than gross negligence in view of the fact that the gross negligence definition also requires proof of "indifference or disregard for the offender's obligations under the statute. . . ." The legislative scheme would be turned on its head with maximum penalties being assessed against the least violative activity. As a practical matter, the legislative changes brought about by CPRSA will be repealed by Customs in the guise of rule making.

The administrative practice in mitigating penalties prior to the 1978 amendments was contained in the so-called "Guidelines for the Remission or Mitigation of Forfeiture and Claims for Forfeiture Value" which were published in the Federal Register as T.D. 74-287. 39 Fed. Reg. 39061, 8 Cust. Bull 553 (1974).

In arguing for the proposed rule changing the definition of fraud, Customs states that it "should be sufficient to prove that the acts (including false statements) were 'knowingly' committed or made, without additional burden of proving that the violator knew that the direct consequences of its action would be loss of duties to the Government or violation of any of its laws." 51 Fed. Reg. 44483. Yet, common law fraud is based upon intent to deceive, and such intent is precisely what was required to establish fraud under the "Guidelines" for the mitigation of penalties. Those guidelines were before Congress when it considered and subsequently adopted the administrative distinctions between fraud, gross negligence, and negligence and enacted the three degrees of culpability, with separate maximum penalties and burdens of proof as statutory law. Indeed, the then Assistant Commissioner of Customs, Leonard Lehman, specifically represented to Congress that such proof would be required in order to establish a fraud violation as opposed to a gross negligence violation. In Hearings Before the Subcommittee on Trade of the Committee on Ways and Means of the House of Representatives on H.R. 8149 and H.R. 8222 (95th Cong., 1st Sees.), p. 72, Assistant Commissioner Lehman responded to Congressman Ed Jenkins of Georgia with the following statement:

> MR. LEHMAN. We have developed standards under the guidelines we use for settling cases in litigation, guidelines which we have published in the Federal Register.
>
> Essentially, we treat as ordinary negligence a case where somebody is held to the standard that the ordinary prudent man should be held to in the circumstances - where we don't necessarily have knowledge that he knew what was required but he should have known based on the type of work or activity he was doing.

> In a gross negligence case, we have evidence that a person had actual knowledge of his obligation but disregarded it. It may not be clear that he acted with intent to defraud the revenue which would take it up to the fraud level. [Emphasis added.]

It is very clear from the above excerpt that the official interpretation of the definition of fraud required that there had to be intent to defraud the revenue or otherwise violate the statute. Congress codified the distinctions between fraud, gross negligence and negligence based on the administrative distinctions between these terms. It does not reflect well on the credibility of the Customs Service for it to seek and obtain legislation from Congress on the basis of its administrative definition of terms only to change those definitions after the terms are codified.

Long-standing administrative practice is deemed to be legislatively ratified when the terms of a statute are enacted in recognition of the administrative definition of the terms. See, for example, Washington Handle Co. v. United States, 34 CCPA 80, C.A.D. 346 (1946). A long-standing administrative practice will not be disturbed absent compelling reasons to the contrary. United States v. Electrolux Corporation, 46 CCPA 143, C.A.D. 718 (1959). The definitions of fraud and gross negligence as set forth in the guidelines, T.D. 74-287, and currently contained in the Appendix to the Customs Regulations cannot now be changed by the Customs Service without congressional approval. Certainly, to do so after these definitions were considered and adopted by Congress is an usurpation of the legislative function by the Customs Service.

B. Voluntary Disclosures

Another important change reflected in the CPRSA was codification of the policy dealing with voluntary disclosures of Customs violations, which was developed and formalized by the Customs Service in the mid-1970's. In numerous appearances before congressional committees, the Customs Service argued for legislation which would foster and encourage voluntary disclosures of Customs violations. Customs clearly recognized that its limited resources matched against the huge volume of imports to the United States rendered unrealistic any policy which would discourage voluntary compliance and rely solely on direct enforcement efforts.

Notwithstanding this earlier policy implemented by the Customs Service administratively and codified by Congress, Customs has recently embarked on a program which has had the clear effect of discouraging voluntary disclosures of Customs violations. That policy has been detrimental both to Customs and to the importing community. Firstly, Customs has implemented detailed regulations governing the method by which voluntary disclosures must be made. These requirements far exceed anything ever anticipated when the provision for voluntary prior disclosure was enacted in 1978. Any failure by the importer, no matter how trivial, to comply with the strict technical requirements for making a disclosure as set forth in the regulations will result in the disclosure being rejected as a *bona fide* voluntary prior disclosure, and full penalties under the statute will be imposed. In addition, internal directives by the Customs Service have made it clear to Import Specialists, Inspectors, and Regulatory Auditors that they are to make every effort in dealing with importers to ensure that where possible they report any suspicious activity for investigation so as to preclude a *bona fide* voluntary disclosure by importers. This has resulted, in many cases, in the institution of penalty cases where no violations have occurred at all, coupled with attempts by Customs to justify the imposition of penalties for clerical errors or other technical infractions which do not rise even to a degree of culpability which can be characterized as negligence. Indeed, Congress specifically mandated in amending 19 U.S.C. 1592 that penalties were not to be imposed for clerical errors. See 19 U.S.C. 15929(a)(2).

We also believe that the proposed definition of fraud would contribute to the disturbing trend in Customs Service policy to discourage importers from making voluntary disclosures pursuant to the provisions of 19 U.S.C. § 1592(c)(4). Under that statute, the prior disclosure of a non-revenue violation or of a revenue violation prior to liquidation will not result in a penalty to the importer if the violation resulted from negligence or gross negligence. A voluntary prior disclosure of a fraud violation may result in a penalty equal to 100% of the duties or in the case of a non-revenue violation, 10% of the dutiable value. Virtually all gross negligence violations would be deemed fraud under the proposed definition resulting in frustration of congressional intent to impose a substantially lesser penalty or no penalty at all for a bona fide prior disclosure of the lesser violation.

The current Customs policies which have had the effect of undermining the voluntary disclosure program are most misguided and unfortunate. The simple fact of the matter is that Customs can never hope to achieve through heavy handed enforcement that which will be gained through even-handed voluntary compliance. Many attorneys who previously would not hesitate to recommend to clients that they make voluntary disclosures of irregularities and tender additional duties which are believed due to Customs, must caution their clients that their disclosure may be met with attempts by Customs to discredit the disclosure and to institute a full-scale investigation disrupting their internal operations and otherwise exposing them to manufactured penalties for matters not covered by a literalistic reading of the disclosure. Many importers simply choose not to make the disclosure and the appropriate tender of duties for fear of retaliation and excessive harassment by Customs. The importers who choose not to disclose are undoubtedly correct in their assumption that the irregularities will never be discovered since after the initial entry period there is little likelihood that the matter will ever again be reviewed by Customs. Everybody is the loser; Customs, the importer, the taxpayer and the Treasury. Customs needs to be reminded by Congress that voluntary compliance is a hallmark of the American system and that every effort should be made to encourage it rather than to frustrate or discourage it.

C. Seizures Under 19 U.S.C. 1595a(c)

We are aware that the Committee has received an abundance of testimony concerning the the flagrant abuses of 19 U.S.C. 1595a(c) by Customs with respect to commercial importations. We will not burden the record with a lengthy recitation of that which has already been said, but we wish to lend our voice in the strongest way possible to the voices of others who have strongly opposed the misuse of this authority in the area of commercial operations. The provision in question was added as a result of amendments contained in the Anti-Drug Abuse Act of 1986, which enhanced Customs seizure authority. At the time these amendments were introduced, Customs made it clear to Congress that the amended provision would be used only for purposes of drug interdiction and would not be used for commercial shipments or to circumvent the safeguards contained in 19 U.S.C. 1592. This understanding has been confirmed by members of Congress, including Congressman Bill Frenzel, and members of various committee staffs who were involved with the provision in question, most notably, the Senate Appropriations Committee. In order to ensure that the provision was not used to circumvent the limitations on seizure authority which are contained in 19 U.S.C. 1592 as a result of amendments by the CPRSA, the new Subsection (c) was limited to the seizure and forfeiture of merchandise imported "contrary to law (other than in violation of Section 592)", 19 U.S.C. 1592.

The abuse of this provision by Customs has been pervasive. Under various Customs rulings and directives, the provision is being utilized for seizure of merchandise alleged to be imported in violation of Section 592. In point of fact, our association has learned that the provision has been used to seize merchandise for every manner of technical irregularity, notwithstanding the fact that there are ample statutory provisions by which Customs can enforce the law without resort to the draconian measure of seizure. This is especially so when the use of seizure under 19 U.S.C. 1595a(c) is undermining the limitations on seizure enacted by Customs in the CPRSA. Notwithstanding these limitations, Customs has felt free to side-step those limitations by deliberately resorting to seizure under 19 U.S.C. 1595a(c) knowing full well that it would either be more difficult or impossible to make the seizures if they were forced to adhere to the procedural safeguards of 19 U.S.C. 1592.

Our association believes that there is a pressing need for an amendment to 19 U.S.C. 1595a(c) in order to prevent continuing abuse of that provision by Customs. The Board of Directors of the Association has endorsed the following language as a proposed amendment to 19 U.S.C. 1595a(c):

> Section 596(c) of the Tariff Act of 1930, as amended [19 U.S.C. sec. 1595a(c)], is amended to read as follows:
>
> "Notwithstanding the provisions of Section 592(c)(5) of the Tariff Act of 1930, as amended [19 U.S.C. Section 1592(c)(5)], any controlled substance, counterfeit substance, depressant or stimulant substances, or narcotic drug, all the foregoing as defined in Section 802 of the Title 21 [21 U.S.C. § 802], as amended, that is introduced or attempted to be introduced into the Customs territory of the United States contrary to law may be seized and forfeited without regard to the payment of any monetary penalty incurred under the provisions of the law with respect to such introduction or attempted introduction."

In the event that the Committee concludes that corrective legislation is appropriate, we ask that it consider the proposed amendment which has been put forward by the Association. We stand ready to assist your staff in any way that we can if you would like any additional input from us.

II

There has been a significant lack of procedural due process in the issuance of major rule changes without sufficient notice and opportunity for comment.

In recent years, particularly in dealing with certain types of import sensitive commodities, Customs has often dispensed with the provisions of Executive Order 12291 and the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., in the implementation of far-reaching changes governing imports. Many major changes affecting millions of dollars worth of imports have been made by internal Customs telex with no notice whatsoever to the importing public until after the fact. In other cases, internal directives issued by memorandum or telex are implemented on such short notice as to make it impossible for importers to adjust their affairs so as to be in compliance with the changes. In many cases, importers are faced with the prospect of going out of business or circumventing the law in order to survive until they have the opportunity to adjust to the changes. Fundamental changes such as those governing country of origin with respect to textile and apparel shipments have been made on less than 30 days notice. 49 Fed. Reg. 31248. Similar far-reaching changes have been made with respect to other import sensitive articles, such as steel products. In many cases, Customs has had to concede error in the making of these almost instantaneous changes by later issuing corrective notices, i.e., 50 Fed. Reg. 8710, but only after the operations of importers have been thrown into total chaos due to these changes made by administrative fiat on a trial and error basis. Customs has blatantly refused to follow the Regulatory Flexibility Act in many of these cases, finding authority to do so in the decision of the United States Court of International Trade in Mast Industries Inc., et al. v. Regan, 596 F.Supp. 1567 (1984).

We would strongly suggest that Customs rule making procedures be reviewed to ensure that where possible Customs is brought under the umbrella of the Regulatory Flexibility Act and Executive Order 12291 and that, at the very least, some effort be made to provide some procedural check on what appears to be a growing abuse of administrative rule making authority by Customs.

III

There has been a serious deterioration in the commercial operations of the Customs Service.

As noted at the outset, there has been a drastic series of cutbacks by Customs both in terms of staff and funding for its commercial operations. Severe cutbacks in personnel and loss through attrition have greatly contributed to a serious loss of expertise at the Customs Import Specialist level and to a general demoralization of Customs Service personnel at all levels; national, regional and district.

Through the years, the Customs Service has been known for having experienced, able personnel at Headquarters and in the field. Experts in classification, appraisement, marking, entry procedures, drawback, and enforcement have moved up through the ranks and have provided service to the public, including domestic producers, importers, and their representatives. We see that expertise declining, in quantity and quality, due in large part to cutbacks in personnel and attempts to eliminate or consolidate certain essential functions. Those cutbacks have had several adverse effects. Valuable personnel have left the Service and have not been replaced, while those who remain have experienced an increase in workload and a decline in morale. This has been reflected by a very noticeable decline in service and qualitative productivity, some of which are described in these comments.

The Tariff Schedules of the United States are the basis for a complex system of tariff classifications and duty rates. Each customs import specialist has the responsibility for classifying specific categories of merchandise, or product lines within their respective expertise. The import specialists must know how the product involved is produced, sold, and used, as well as how the legal headnotes and particular tariff provisions apply to that merchandise. Familiarity with administrative rulings and court decisions affecting the merchandise within that line is vital to the import specialist's functioning in an informed, intelligent, and efficient manner. Recent cutbacks have led to consolidation of merchandise lines so that, for example, an import specialist who may have spent years learning about tobacco, now has to classify food products as well. Thus, a greater number of products are now being handled by an import specialist with experience in one line who lacks the product expertise which was previously enjoyed by another specialist.

In some cases, there is no import specialist at all for the product line in question. For instance, the Customs Service has not assigned a full-time import specialist in the automobiles and automobiles parts line for at least a year and perhaps longer to Los Angeles/Long Beach, one of the busiest ports of entry in the United States for those products. Someone was filling in on a part-time basis in a post-maternity situation, but she was reassigned in February or March and has not be replaced. The net result is that even though billions of dollars for these articles enter through this port, there is no full-time import specialist to supervise the classification of the merchandise. This same situation exists in countless cases with respect to other products in ports located throughout the United States. A question that formerly could have been promptly and surely answered takes considerably more time because it is being handled by personnel with less expertise, operating under an increased workload. When an import specialist lacks time or sufficient support staff, doubts are often resolved in favor of the government and the importer told that the decision may be protested (administratively challenged) and, if unsuccessful, ultimately challenged in court. At first blush this more arbitrary approach may seem to be more time effective. However, the administrative review procedure is even more time consuming and, in the long run, additional Customs personnel will be required at both the district and headquarter's levels in order to process the increased number of administrative reviews. As the number and caliber of classification experts declines, more decisions will have to be based on administrative convenience with a consequent increase in administrative and judicial review. The number of actions brought to the Court of International Trade will increase, with the concomitant need for increased government personnel in the Courts, the Department of Justice, and the legal arm of the Customs Service. Litigation is costly to the government as well as to the importer/businessman and domestic industry. There is a reasonable likelihood that it can be avoided, or at least minimized, by retaining and, indeed, restoring the requisite number of teams of experienced import specialists to handle questions at the procedural level, before they mature into controversies.

The Customs Service is simply unable to "service" the needs of the importing community. Indeed, the Commissioner of Customs has publicly stated that perhaps the name of the Customs Service should be changed from Customs Service to its former name, Bureau of Customs. Due to lack of funds and personnel, neither importers nor their brokers or attorneys are able to obtain advice on a timely basis as to precise requirements in terms of classification, quota, valuation, and other vitally important matters which are necessary to the correct entry and clearance of merchandise. Importers are often placed in the impossible situation of "importing at their peril." They cannot obtain advice from Customs as to the correct tariff and quota categories or other important requirements. Yet, if they are wrong in any respect, they are immediately and severely penalized after importation in the form of seizure and/or fines. It is a very sad state of affairs when an importer cannot go to Customs prior to importation and obtain timely advice as to the way in which merchandise must be entered. If advice is given informally, it is often subject to change without notice. If an importer seeks a binding ruling from Customs Headquarters, it may take months and even years to obtain the ruling. (Needless to say, the staff in the Office of Regulations at Customs Headquarters which has the responsibility to issue binding rulings has been greatly reduced.)

For many importers, the situation has become intolerable. At the bare minimum, importers should be able to seek and rely on advice from Customs without liability and exposure to penalties in the event that they "guess" wrong. Many Customs determinations are highly subjective and at the local level are often inconsistent. Yet, even though an importer could not obtain advice from Customs on which he could rely in the first place, if the importer is "wrong," he is penalized. (The importer may be "right" as a matter of law; but if his action is not in accord with the monetary position of the day in the Customs administration, he is subject to often severe penalties.)

While we have no objection to appropriate measures to enforce the Customs laws, we suggest that it is just as important to have adequate qualified import specialists and other experts who can timely provide guidance and assistance to the importing public regarding the proper methods of marking, entering, or describing imported merchandise so as to forestall conduct that will otherwise subject them to subsequent time consuming and less productive enforcement procedures. If commercial fraud and negligence are going to be vigorously prosecuted and penalized, there should be adequate experienced, talented, and willing Customs personnel available to properly assist and guide the importer who seeks to avoid punitive actions by obtaining nonenforcement oriented administrative assistance. Customs should be encouraging and helpful to the prudent importer in his efforts to properly comply with Customs' requirements. Similarly, the existence of a trained and knowledgeable corps of Customs import specialists is essential in order to guide Customs, itself, in pursuing any intelligent, productive program of enforcement of the customs laws and regulations for the many different types of products imported into the United States. Without such a cadre of import specialists, Customs' enforcement will be nonproductive, less effective, and more susceptible of avoidance. If the Service lacks the proper number of qualified personnel, at every level, companies involved in exporting from and importing into the United States will be seriously and adversely affected, and international trade will be hindered.

In addition to personnel problems, many other deficiencies exist due to cutbacks. For example, when entries are liquidated, if the entries are "no change" entries, importers are denied the fundamental right to look at those entries to see what action was taken by the import specialist leading to the liquidation of the entry. This fundamental right, the right of review, which has long been recognized by the courts, is being denied to importers. Access is now gained only under the Freedom of Information Act. Customs Headquarters has denied access to entries subject to no change liquidations simply because of a lack of resources to enable the Customs field personnel to make entries available.

IV

Customs has been implementing far reaching changes in the area of automation without sufficient interaction with all segments of the trade community regarding the impact of these changes.

The United States Customs Service has, during the 1980's, embarked on a course of automation with the ultimate stated goal being the "paperless entry." The membership of the Customs and International Trade Bar Association wishes to express its concern that the accomplishment of such goal not, in any way, jeopardize the statutory legal rights provided to the international trade community. Although the United States Customs Service has been working with many private sector groups (i.e., the customs brokers association, transportation associations and individual importers), none of the groups has apparently focused on the legal rights of the international trade community. As a bar association whose individual members are involved in the representation of parties involved in international trade, we are viewing the Customs Service move to automation from the perspective of the preservation of the legal rights of the international trade community.

We naturally applaud the Customs Service's efforts to keep up with the times and automate so as to eliminate much of the burden of paperwork and make importing more manageable for both the Customs Service and the importing community. However, safeguards must be in place to ensure that the legal rights of the importing community are not endangered. For example, the concept of "statement processing for one day's entries at all ports" appears, on the surface, to be most admirable. However, without the appropriate safeguards, importers' rights can be greatly curtailed. If payment under the "statement processing concept" is made by a customs broker on behalf of all of its clients, how will each client obtain verification that its customs duties have been paid? Electronic Funds Transfer is also, on the surface, a worthwhile concept. However, safeguards must be in place so that acknowledgment of receipt of the transfer is available to the importer.

When the Customs Service fully implements the "paperless entry" how will an importer be notified that the Customs Service disagrees with the tariff classification provision under which a certain imported article was entered? The importing community must continue to be advised of how its merchandise is appraised and classified and how and when said merchandise is finally liquidated. Without such information, an importer will not be in a position to exercise its statutorily provided right of filing an administrative protest against a decision by the Customs Service with which the importer disagrees.

A question which necessarily arises with a paperless entry system is the documentation which needs to be furnished to the United States Court of International Trade upon the filing of a summons by an importer. Since there will be no "entry jacket" maintained by the Customs Service how will the Court receive the information regarding the merchandise and in what form will said information be provided?

With the move toward automation and the "paperless entry" the Customs Service is attempting to meet its objective and the objective of the importing community to move merchandise through the Customs process in an expeditious manner with the least amount of expense. The objective of the members of the Customs and International Trade Bar Association is to ensure that such a goal is accomplished without jeopardizing the rights of the importing community, rights which may be overlooked by the importing community itself.

For this reason, Customs must endeavor to consult with a broader public as it continues its efforts to automate. While we applaud the move to automate and modernize entry procedures and processing, programs must be implemented in such a way as to ensure that the substantial rights of importers are not impaired.

CONCLUSION

On behalf of the Association, we very much appreciate the opportunity afforded to us by the Oversight Committee to present our views and to have them considered in connection with the review of the activities of the Customs Service. We stand ready to assist your committee in any way that we can and hope that the activities of the Committee will lead to substantial improvements in the overall operations of the Customs Service.

Chairman **Pickle**. Now we will ask Mr. Albert May to proceed. He is the executive vice president of the United Shipowners of America. Mr. May?

STATEMENT OF ALBERT E. MAY, EXECUTIVE VICE PRESIDENT, UNITED SHIPOWNERS OF AMERICA, ACCOMPANIED BY GARY S. TAYLOR, DIRECTOR, INFORMATION STRATEGY AND DEVELOPMENT, AMERICAN PRESIDENT COMPANIES, LIMITED; AND ADI ABEL, MANAGEMENT CORPORATE DOCUMENTATION, SEA-LAND CORP.

Mr. **May**. Thank you. Good morning.

The United Shipowners of America is a national trade association that represents over 95 percent——

Chairman **Pickle**. Can you speak into the microphone?

Mr. **May**. Yes, sir; is this better?

Chairman **Pickle**. Yes.

Mr. **May**. The United Shipowners of America represent over 95 percent of the U.S.-flag liner capacity. With me today, on my right, is Mr. Adi Abel of Sea-Land Corp., who is here for Mr. Staunton; and on my left, Mr. Taylor of American President Lines.

I am here to underscore the fact that all U.S.-flag liner companies which are our common carriers, and in fact, all of the foreign common carriers that we talked to and we talked to many, endorse the general statements we are making and the five specific proposals that are contained in our longer statement, which is filed with the committee. Mr. Taylor and Mr. Abel are here because they are national—indeed, internationally recognized experts on data transfer as it applies to Customs matters, and they will be able to answer many of your questions that I cannot.

To understand our problem, you have to recognize the fact that during the past 15 years, the merchant marine has been in a major transition, moving from a predominantly break-bulk operation through containerization to intermodalism. The transition has been in response to the demands of customers for efficient, reliable service at affordable costs.

Previously, customers accepted freight when it arrived at the pier, hoping that damage and pilferage had been minimized. Today, customers must meet the demands of just-in-time inventory levels, be kept informed of container location, and are not tolerant of damage or loss of cargo.

To meet these demands, carriers, led by those in the United States, have developed intermodal systems which permit a through bill of lading to be issued on a sealed container at an inland point overseas, for delivery at an inland point in the United States, or vice versa.

Under such a system, the steamship operator is responsible for securing efficient inland truck or rail transportation, both in the United States and foreign countries. Such complex systems cannot work efficiently without the utilization of modern technology by the carrier and the government agencies which affect the flow of cargo.

Each element of these systems is continually examined and improved as required. Such improvements must often be complement-ed by changes in Customs practices and regulations to achieve maximum efficiency. In the days of break-bulk operations, the Customs Service had little impact on the system; today, Customs is a very important element of intermodal systems. We are appreciative of the efforts made by the Customs Service to improve their part of the commercial operation and would like to discuss our views with this subcommittee today.

To date, this committee has heard from a number of representatives of international business organizations about problems with the current practices of the U.S. Customs Service. We do not believe there is any point in further restating problems and would like to focus on the future, since the potential now exists for the U.S. Customs Service, working cooperatively with the trade community, to leapfrog into the future with systems and approaches for streamlining the trade process that will not only benefit our industry and the importers and exporters we serve, but ultimately help the trade position of the United States.

We recognize that there are many different problems, but experience has convinced us that a good-faith effort between Government and industry will result in workable solutions. We are particularly encouraged by the success of the cooperative effort with the Customs Service on the recent "bill of lading unique identifier" problem.

There was give and take on both sides, and the solution announced last month by Commissioner von Raab is practical and will work. We also commend Customs for its decision to continue to meet with a broad-based maritime industry group to help identify and resolve future problems.

The elimination of paper is a fundamental commitment of our industry, and the increased use of automation and electronic data interchange is essential to this effort. Indeed, we are now at a point where we could not handle the amount of trade we currently do without systems in place to review and clear imports electronically.

As trade continues to expand in the future, automation will become even more important for processing trade documentation. And, without increased automation, the Customs Service will be unable to carry out its enforcement and facilitation mandate as trade continues to grow, and we will not be able to provide the type of efficient service which we desire.

Fundamental to the elimination of paperwork is a wholesale reexamination of the trade process that gives rise to the paperwork. Consider that currently the average international shipment involving a U.S. party requires approximately 46 separate documents and 360 copies of those documents. That is for a single shipment.

Nine percent of the forms required to the various parties to an international transaction are for the purpose of internal filing and classification of our forms by Government agencies. Even though carriers and their customers are now capable of electronically translating bill of lading information, we must still submit a hard copy of each bill of lading for exports. This is because government regulations have not been amended to accommodate technological advances.

We believe that it is the responsibility of the private sector to seek changes in Government procedures to meet our evolving needs. In some areas, a great deal of progress has already been accomplished through joint industry-Government efforts. These include the master-in-bond program, the automated commercial system, and the automated manifest system module.

The "one-stop quota processing program" and the paired ports program and the triangulation of paired ports are two additional examples.

The members of the United Shipowners of America recommend a five-step approach to changing the process underlying trade documentation. These recommendations have been adopted as a core strategy by the International Trade Facilitation Council, or NCITD as it has been traditionally known, and are endorsed by all foreign steamship operators with whom we have talked.

Mr. Chairman, because of lack of time, I will not read the five points, but they are set out in some detail in my complete statement.

The members of U.S.A. are committed to implementation of these goals and we urge representatives of U.S. Customs, the Department of Agriculture, the Department of Commerce and other agencies to join in this effort. Members of Congress also have a crucial role to play, for many paperwork requirements are no longer appropriate or necessary, yet these requirements are mandated by existing laws. Our industry is eager to work with Congress to identify the legislative barriers, and support new legislation to change these laws.

Thank you very much.

Chairman PICKLE. Thank you, Mr. May.

[The statement of Mr. May follows:]

TESTIMONY OF ALBERT E. MAY

ON BEHALF OF UNITED SHIPOWNERS OF AMERICA

BEFORE THE HEARINGS OF THE SUBCOMMITTEE ON OVERSIGHT

COMMITTEE ON WAYS AND MEANS

AUGUST 9, 1988

Mr. Chairman and membes of the Subcommittee:

My name is Albert E. May. I am Executive Vice President of the United Shipowners of America (USA), an organization of five U.S.-flag shipping lines whose objective is to promote the competitiveness of the United States Merchant Marine. USA members own over 95 percent of the U.S.-flag liner capacity serving the international trade of the United States. The members are American President Lines, Crowley Maritime Corp., Farrell Lines, Lykes Bros. Steamship Co., and Sea-Land Service.

Accompanying me today are Gary Taylor, of American President Lines, and Adi Abel, of Sea-Land Service.

During the past 15 years, the merchant marine has been in a major transition, moving from a predominantly breakbulk operation through containerization to intermodalism. The transition has been in response to the demands of customers for efficient, reliable service at affordable costs. Previously, customers accepted freight when it arrived at the pier, hoping that damage and pilferage had been minimized. Today, customers must meet the demands of just-in-time inventory levels, be kept informed of container location and are not tolerant of damage or loss of cargo.

To meet these demands carriers, led by those in the United States, have developed intermodal systems which permit a through bill of lading to be issued on a sealed container at an inland point overseas, for delivery at an inland point in the United States, or vice versa. Under such a system, the steamship operator is responsible for securing efficient inland truck or rail transportation, both in the United States and foreign countries. Such complex systems cannot work efficiently without the utilization of modern technology by the carrier and the government agencies which affect the flow of cargo. Each element of these systems is continually examined and improved as required. Such improvements must often be complimented by changes in Customs practices and regulations to achieve maximum efficiency. In the days of breakbulk operations, the Customs Service had little impact on the system; today Customs is a very important element of intermodal systems. We are appreciative of the efforts made by the Customs Service to improve their part of the commercial operation and would like to discuss our views with this Subcommittee today.

To date, this Committee has heard from a number of representatives of international business organizations about problems with the current practices of the U.S. Customs Service. We do not believe there is any point in further restating problems and would like to focus on the future, since the potential now exists for the U.S. Customs Service, working cooperatively with the trade community, to leapfrog into the future with systems and approaches for streamlining the trade process that will not only benefit our industry and the importers and exporters we serve, but ultimately help the trade position of the United States.

We recognize that there are many difficult problems, but experience has convinced us that a good faith effort between government and industry will result in workable solutions. We are particularly encouraged by the success of the cooperative effort with the Customs Service on the recent "Bill of Lading Unique Identifier" problem. There was give and take on both sides, and the solution announced last month by Commissioner von Raab is practical and will work. We also commend Customs for its decision to continue to meet with a broad-based maritime industry group to help identify and resolve future problems.

Specifically, we believe the possibility now exists to create a completely paperless environment, in which the large volumes of hard-copy documents now required in international commerce would be eliminated. Such an environment would end the delays inherent in processing and distributing these documents. Further, if all of the information needed in the conduct of trade were drawn from a single source - that is the original purchase order issued to the supplier - the government would be able to compile more reliable data on imports and exports.

If the United States and other nations develop compatible systems, a fully automated information network could be established that would facilitate greater volumes of international commerce and allow us to accurately anticipate shifts in the balance of trade.

The elimination of paper is a fundamental commitment of our industry, and the increased use of automation and electronic data interchange is essential to this effort. Indeed, we are now at a point where we could not handle the amount of trade we currently do without systems in place to review and clear imports electronically.

Over the past five years, the annual growth of containerized imports from Asia alone has averaged 17 percent. This import market currently represents 1.5 million 40-foot container loads per year. Industry analysts project a six percent rise in imports from Asia in 1988. As trade continues to expand in the future, automation will become even more important for processing trade documentation. And, without increased automation, the Customs Service will be unable to carry out its enforcement and facilitation mandate as trade continues to grow.

Clearly, automation is essential to the streamlining of documents associated with trade. But we believe it is equally essential - and perhaps even more fundamental to the task of getting rid of the paper - to examine the trade process itself that gives rise to the tremendous volume of paperwork required in international trade today.

The later point is so basic that we believe industry and government often overlooks it. Instead we emphasize the role of technology in bringing improvements.

There have been dramatic advancements in our ability to compile and transmit information electronically in the past two decades. Yet, because of a failure to attack some of the longstanding procedural conventions followed by business and government, there are many areas in which otherwise modern and technologically sophisticated international businesses are unable to fully exploit their capabilities.

We would like to focus on some of the developments in our industry to help explain why we believe it is so important to review the process of trade documentation.

Leading container transportation companies have developed highly efficient multimodal distribution systems that use a combination of rail, truck and ocean transportation. Typically, these systems are supported by extensive computer and telecommunications networks.

These multimodal systems provide a number of benefits for importers, exporters, manufacturers and retailers who are eager to improve the productivity of their operations. Customers can now expect to have access to multiple-source consolidation services in the origin country; a wide selection of containers; fast, efficient inland transportation connections under a single freight bill; and a variety of supporting information services.

These new information services not only help customers track their cargo, but enable them to better control the overall economics of their transportation and distribution operations. For example, some carriers now have customers "on line", using their own personal computers or office terminals to gain access to the carrier's computer database for shipment information.

Development of such value-added services has supported the changes customers are making in the way they do business. More and more companies are altering their sourcing, production and merchandising processes to improve productivity. Such changes have included the establishment of "just-in-time" operations in this country. Examples of this are the Japanese auto plants that are being established in the United States. The Japanese have used inventory-free production systems for many years for their production and distribution facilities within Japan. Today these auto makers are using reliable, computer-supported deliveries to develop global just-in-time operations. With easy access to real-time information about cargo currently in the distribution stream, multinational manufacturers and retailers can not only reduce physical stock, but also shorten their production or order lead time, and improve margins.

Carriers working with such firms handling their time-sensitive, often high-value freight are seeing real productivity gains and a shortening of the overall logistics and distribution cycle. But our organization is concerned that the productivity improvements being implemented by some carriers and their customers are not being matched with the reduction in paperwork required by various agencies involved in the international process.

In the early 1970s, the International Trade Facilitation Council or NCITD as it has traditionally been know, determined that the average international shipment involving a U.S. party required 46 separate documents and 360 copies of these documents. While some progress in paperwork reduction has been made since these figures were calculated, new forms have also been introduced, so we would say this estimate is still fairly accurate today.

Why this lack of progress? Our failure to attack the procedures that give rise to these individual documents, we believe, is a principal reason. In many instances, different forms require submission of the same, standard information, but in different formats. A good illustration of this is the similarity between the export declarations U.S. companies fill out and the entry forms completed by the overseas importer.

Furthermore, it has been estimated that nine percent of the forms required of the various parties to an international transaction are solely for the purposes of internal filing and classification of other forms by government agencies. Reducing this type of paperwork by adopting the form classification numbers used by industry would be a major productivity enhancement in most traffic departments.

As one final illustration of how we have failed to attack the process of trade documentation, consider that, even though carriers and their customers are now capable of electronically transmitting bill of lading information, we must still submit to U.S. Customs a hard copy of each bill of lading for exports. This is because government regulations have not been amended to accommodate this technological advancement.

We believe that it is the responsibility of the private sector to seek changes in government procedures to meet our evolving needs. In some areas, a great deal of progress has already been accomplished through joint industry-government efforts.

- In 1978, the Master-In-Bond Program was first developed by Customs and our industry. Prior to this program, intermodal carriers had to submit literally hundreds of in-bond documents to cover the import shipments destined for inland cities. By enabling carriers to consolidate these forms into a single document for each destination, Customs has greatly enhanced our ability to efficiently manage intermodal shipments.

- The Automated Commercial System (ACS) has already simplified the import review and clearance process by facilitating greater use by Customs of management-by-exception. Under the Automated Manifest System (AMS) module of ACS, participating carriers electronically input their inward foreign manifest data directly into Customs' centralized data center in Virginia. This allows that same data to be accessed at any Customs' office throughout their system and also to be printed out where hard copy is required. The AMS has thus far made it possible for carriers calling at Pacific Region ports to reduce the number of hard copy manifests to only one copy per port of discharge. The Automated Broker Interface (ABI) module allows customshouse brokers to communicate directly with Customs' computers, in order to transmit data entry information on imports. In each case, the industry and its customers have benefited from faster review and preclearance of imports. At the same time, Customs has reduced the amount of data it must manually input, while improving the quality of information it receives to monitor imports and exports.

- The "One Stop Quota Processing" program in Los Angeles and Seattle has also led to faster review of many imports - in particular the tremendous volume of textiles and apparel shipped to this country from Asia. In the past, importers or brokers had to wait for their entry forms on quota shipments to be reviewed by three different departments. By combining these three steps into a single review process, Customs has reduced the average clearance period from three or four days after vessel arrival to a single day. When you consider how time-sensitive the average containerload of fashion apparel is, this can represent a significant cost savings for retailers, in terms of the time value of the money they have tied up in inventory.

* The Paired Ports program and the Triangulation of Paired Ports are two additional examples of programs Customs has initiated that provide flexibility and efficiencies to the importer community as well as the same benefits to the U.S. Customs Service. Additionally, these programs provide additional time for Customs to review documents and information regarding each importer through use of the ACS.

These are all positive developments, and both government and private industry can be commended for the hard work and cooperation that brought them about. However, this piecemeal approach to automating documentation has failed to keep pace with the need for fast, precise deliveries of large volumes of international freight to support highly sophisticated sourcing and distribution systems. There continues to be a tendency to look for technologial solutions at the level of "bits and bytes", when a wholesale examination of the process that underlies the paperwork might be more effective.

Let me illustrate by pointing out some further opportunities that exist within the positive developments that I have just cited.

* Carriers that made the investments necessary to participate in the AMS system are still required by Customs' laws to submit hard copies of each vessel manifest to the Customs office at every port of discharge, notwithstanding that the same data is already available to each of these offices on Customs' own internal system.

* The application of some Customs regulations are inconsistent from region to region, bringing uncertainty into the day-to-day business of the commercial parties and carriers. Two examples are how Customs Inspectors classify quota merchandise and significantly different operating procedures for the processing of In-Transit Shipments. These inconsistencies are possibly symptons of organizational structures that need reevaluation to ensure greater uniformity while still accommodating the need for a certain degree of decentralization.

Additionally, there are several areas where Customs is the enforcer of regulations that are maintained by other agencies, but which produce significant inefficiencies. Examples include:

* Bureau of Census requirements which mandate that carriers desiring to electronically input their outbound manifests would still be required to submit the same data in hard copy form.

* Department of Commerce Export License requirements which were founded by a 1987 National Academy of Sciences study to encompass a high number of goods having no military application or strategic importance. Many review this as regulation that can only result in lost opportunities for U.S. exporters.

* Bureau of Census requirements that the carrier be the hard-copy paper collector of Shipper Export Declarations for all export cargoes contained on the ship within four (4) days of sailing. This applies to all shipments except for shippers who voluntarily submit monthly reports directly to Census, post-facto reporting their previous month's export activities. Approximately 30% of U.S. exports are directly reported after the fact by exporters. The manual gathering of the other 70% causes the vessel operators immense clerical expense as the operator is fined if unable to obtain and submit the Shipper Export Declarations to Customs within four days. The Shipper Export Declarations normally have absolutely nothing to do with the transportation being performed. By law, much of the content therein is proprietary and not even accessible by the carrier.

Clearly these are fertile areas for inter-agency coordination and streamlining, consistent with today's automated business environment and our nation's exporting priorities.

The members of the United Shipowners of America recommend a five-step approach to changing the process underlying trade documentation. These recommendations have been adopted as a core strategy by the International Trade Facilitation Council, or NCITD as it has been traditionally known.

The five steps are as follows.

1. Target for elimination unnecessary or redundant documents and procedures.

2. Work to change the laws and regulations that are perpetuating the existing, inefficient process.

3. Evaluate and recommend changes in the organizational structure of and coordination between government agencies, to better accommodate the proposed changes in documentation.

4. Support the funding and development of government information systems that facilitate the proposed changes.

5. When appropriate, present the new electronic systems or procedures to our trading partners, to stimulate overseas government and private-sector support for multinational standards. This should be an ongoing activity throughout this multistep process, to ensure that U.S. innovations in paperwork reduction are compatible with the regulations or innovations of other countries, and vice versa. Obviously, no one country can successfully change the documentation process in a vacuum.

The members of U.S.A. are committed to implementation of these goals and we urge representatives of U.S. Customs, the Department of Agriculture, the Department of Commerce and other agencies to join in this effort. Members of Congress also have a crucial role to play, for many paperwork requirements are no longer appropriate or necessary, yet these requirements are mandated by existing laws. Our industry is eager to work with Congress to identify the legislative barriers, and support new legislation to change these laws.

Thank you very much.

Chairman **Pickle**. Now we will ask Mr. Landry if he will proceed.

STATEMENT OF JAMES E. LANDRY, SENIOR VICE PRESIDENT AND GENERAL COUNSEL, AIR TRANSPORT ASSOCIATION OF AMERICA

Mr. **Landry**. Thank you, Mr. Chairman, and members of the committee.

Our association represents most of the scheduled airlines of the United States. Eighteen of our member airlines provide regularly scheduled air service between the United States and more than 80 countries.

Our member carriers view their role in international transportation as one in basic partnership, rather than conflict, with the Customs Service. This is an area in which the Government and the airlines must work in close harmony to assure optimum levels of Customs revenue collection, quality enforcement, and passenger and cargo facilitation.

Unfortunately, as Customs continues to focus on achievements in enforcement, at ATA we frequently find ourselves running interference between the carriers and Customs Service management decisions on the commercial and passenger side which pay little, if any, heed to the importance of cooperative efforts built on mutual understanding and respect.

Confrontation has become more common, cooperation increasingly is paid only lip service.

My prepared statement sets forth some of the problem areas in the Customs Service-airline relationship which have just recently come to light. One of the most disturbing examples highlights the fact that intolerable staffing inadequacies still exist, even though some $130 million has been collected from air passengers through a special $5 tax, and remitted to the Treasury Department, purportedly in order to provide full and adequate passenger processing on an as-needed basis.

I speak of the recent, frustrating effort by one carrier to secure Customs clearance for a new flight, scheduled to leave Toronto at 11 p.m. and arrive in Los Angeles early the next morning. After months, that carrier was denied pre-clearance in Toronto and denied postclearance at 1 a.m. in Los Angeles, and finally denied even the clearance of the flight if it were diverted to Miami, some thousands of miles away.

Finally, at the last minute, due to a last-minute intervention at the highest levels, the flight, is now being cleared by Customs by allowing the flight, at considerable expense and delay, to stop at the Detroit Airport for clearance.

While we applaud this last-minute intervention, we are compelled to ask why, in the face of both the statutory assurance of adequate staffing, bought and paid for through the user tax, and the obvious fact that the United States is not closed for business at 11 p.m., is it necessary to put a carrier through this process simply to conduct the business of moving air commerce in response to demand?

In the same vein of inadequate staffing levels, another major international carrier advised us, in preparation for today's hearing, that its figures for the first half of July showed passenger clearance times for wide-bodied aircraft ranging from an average of 59 minutes for one flight to 145 minutes for another.

There are, of course, alternative approaches to the staffing problems confronting the Customs Service which can be undertaken to increase efficiency without harming the vial interests protected by the Service. The best example of this is the so-called high/low clearance program.

Under this program, currently in use only in Miami during peak traffic hours, passengers are differentiated on the basis of risk; with high-risk flights from high-risk locations receiving appreciably greater Customs scrutiny, while low-risk passengers are processed on a spot-check basis. We strongly urge the further testing and extension of the high/low concept to other U.S. gateway cities.

My prepared statement suggests other areas of significant potential for increased Customs staffing efficiencies, such as expanding the preclearance of U.S.-destined flights.

For the longer term, as to the United States and Canada, we believe the time is ripe for our two great countries to introduce a joint, shared passenger inspection service along our common border and at appropriate airports such as the present preclearance locations.

At other locations overseas, for example in Europe, Customs must be directed to cooperate with Immigration and agree to establish preclearance at appropriate locations.

Let me turn briefly to Customs' approach to fines and penalties enforcement.

As I point out in my prepared statement, no single issue has led to greater carrier consternation. While the carriers fully recognize their responsibilities, and must expect to be fined in the event of their failure to adhere to regulations, the current enforcement procedure fails the test of fundamental fairness.

Another cause for great concern is the Customs Service's enforcement of the Omnibus Anti-Drug Abuse Act of 1986, which significantly increased the fines for transporting illegal drugs. The law also permits seizure and forfeiture of aircraft unless it is established that neither the owner-operator, pilot or any employee responsible for maintaining and insuring the accuracy of the cargo manifest knew, or "by the exercise of the highest degree of care and diligence could have known," that such merchandise was on board.

Despite the airlines' best efforts and cooperation with the U.S. Customs Service, Customs levies significant fines on airlines when drugs do get into the United States, even though Customs recognizes that circumstances may have been beyond the control of the airline. Because of the broad nature of the current statute, Customs has applied these fines with vague justification and uneven application.

The airlines want to help deter drug traffic, but we believe that the focus of the war on drugs on commercial airlines should be shifted from the punitive emphasis on simply fining carriers to a serious and realistic effort to prevent the importation of drugs and provide a deterrent to smugglers.

We have suggested language for inclusion in the omnibus drug bill to establish a voluntary program for drug smuggling prevention similar to the current airlines standard security program governing airlines and airports, an air carrier smuggling prevention program tailored to the drug environment in individual countries.

Finally, my statement cites two recent rulemakings as illustrative of the mindset with which we are concerned. One will require the posting of a bond for violations of Customs security area regulations. The other would require that carriers collect, code and electronically transmit carrier information at least one hour prior to their arrival in the United States.

This proposal demonstrates literally no concern for either the cost or practicability of such a program from the carrier and passenger point of view. I might add that IATA, which represents 172 U.S.- and foreign-flag airlines around the world, shares our convictions in this regard.

In both instances, the Customs' interpretation of its legal authority is of dubious validity.

It is worth closing with the thought that in fiscal year 1989, Customs projects collecting almost $18 in revenue for every $1 it spends. It is this passenger and commercial revenue which funds not only Customs enforcement efforts, but a myriad of other Government services. That revenue flow can best be protected and enhanced, as can Customs enforcement efforts, by working in partnership with its sister agencies and with the airline industry, not at odds with them.

Thank you, Mr. Chairman.

Chairman PICKLE. Thank you very much.

[The statement of Mr. Landry follows:]

STATEMENT OF JAMES E. LANDRY
SENIOR VICE PRESIDENT AND GENERAL COUNSEL
AIR TRANSPORT ASSOCIATION OF AMERICA
BEFORE THE SUBCOMMITTEE ON OVERSIGHT
COMMITTEE ON WAYS AND MEANS
UNITED STATES HOUSE OF REPRESENTATIVES
AUGUST 9, 1988

Mr. Chairman, members of the Committee -- my name is James E. Landry. I am Senior Vice President and General Counsel of the Air Transport Association of America (ATA), which represents most of the scheduled airlines of the United States. Eighteen of our member airlines provide regularly scheduled air service between the United States and more than 80 countries.

We thank you for the opportunity to appear here today. The message which I hope to leave with you -- and which we have worked very hard to communicate to the Customs Service -- is a simple one: The carriers view their role in international transportation as one in basic partnership, rather than conflict with the Customs Service. This is an area in which the government and the airlines must work in close harmony to assure optimum levels of Customs revenue collection, quality enforcement, and passenger and cargo facilitation.

While on an individual, employee to employee basis, the necessity of this cooperative approach to the carrier/Customs relationship is well understood, on the larger scale we seem to have lost our way to a certain extent. As Customs continues to focus on achievements in enforcement, at ATA we frequently find ourselves "running interference" between the carriers and Customs Service management decisions on the commercial and passenger side which pay little, if any, heed to the importance of cooperative efforts built on mutual understanding and respect.

Confrontation has become more common, cooperation increasingly is paid only lip service. Too often recently the Customs approach has been to announce policy by fiat -- without regard to real world operating implications and with concern, unfortunately, only for Customs' views. It then falls to the carriers to go back and rationalize the nuances and work to mold the policy or practice to reality. While, to date, lasting harm has not been done we are convinced that if this approach becomes embedded at Customs management levels, polarization will result.

This concern is, of course, a difficult one to quantify. Perhaps it would be best if I proceed simply by describing for you some of the problem areas in the Customs Service and airline relationship which have just recently come to light. They are, I believe, symptomatic of the overall situation.

STAFFING INADEQUACIES

As you know, in 1986 intercontinental passengers arriving in the United States began paying a special $5 tax earmarked for the Customs Service. Since that time on the order of $130 million has been collected from air passengers and remitted to the Treasury Department, purportedly in order to provide full and adequate passenger processing on an as-needed basis. The same quid pro quo was understood to underlie the companion imposition of the ad valorem tax on cargo.

While the airlines did not support this initiative, (and continue to believe it is akin to charging people to file their tax return) we recognized that the combined impact of deficit reduction efforts and the war on drugs would likely diminish the resources of the Customs Service available to process passengers and air cargo. To forestall this result, and based upon the statutory assurance that Customs resources would be provided as needed to clear arriving passengers and cargo, the passenger and cargo 'user fees' were enacted.

The result? Let us focus on the passenger fee alone. Two years after its imposition one carrier informed us of its recent, frustrating, effort to secure Customs clearance for a single additional new flight. This flight was scheduled to depart Toronto at approximately 11:00 PM each evening to arrive in Los Angeles early the next morning. Following established protocol the carrier, some months in advance, requested approval of Customs preclearance at Toronto. The request was denied and the carrier was told that manpower would not be made available. Entreaties to the Customs regional level were turned back. A request to post-clear the flight upon arrival in Los Angeles was also denied as was an offer by the carrier to divert the flight thousands of miles through Miami, to make a technical stop, for clearance into LAX. Finally, after months of effort, and literally on the eve of the flight's first departure, Customs decided at the highest levels to direct middle management to seek a staffing accommodation. This has been done by allowing the flight, at considerable expense and delay, to stop at the Detroit airport for clearance.

While we applaud this last minute intervention, we are compelled to ask why, in the face of both the statutory assurance of adequate staffing, bought and paid for through the user tax, and the obvious fact that the United States is not "closed for business" at 11:00 PM, is it necessary to put a carrier through this process simply to conduct the business of moving air commerce in response to demand? We would submit that the answer in large measure stems from an emerging Customs Service mind-set of "us versus them" in which the emphasis is not on "how to accommodate commercial needs," but rather "why should we be responsive?" For the record, I would note as well that this is not an isolated example -- several carriers have received similar treatment when they attempted to meet market demands for new service.

In other cases we have heard repeatedly of inadequate staffing levels. A major international carrier advised us, in preparation for today's hearing, that its figures for the first half of July showed passenger clearance times for widebodied aircraft ranging from an average of 59 minutes for one flight to 145 minutes for another. These clearance times, which overall average in the 80-90 minute range for widebodies, and include Customs, Immigration and Agriculture processing, are well in excess of the Congressional target goal of 45 minutes from aircraft door to Customs exit.

Other examples of staffing problems abound. One carrier indicates that it periodically receives calls directing it to segregate specified cargo in its cargo handling facility for immediate Customs inspection. Unfortunately, due to the diversion of Customs personnel, the scheduled inspection may then be put off by Customs without notice for a day or more, leading to both physical congestion and the substantial risk that the cargo will not be immediately available upon the eventual arrival of Customs officials. The net result is dissatisfaction on the part of both Customs and the carrier -- and the risk of a fine imposed on the carrier.

There are, of course, alternative approaches to the staffing problems confronting the Customs Service which can be undertaken to increase efficiency without harming the vital interests protected by the Service. The best example of this is the so-called High/Low clearance program. Under this program, currently in use only in Miami during peak traffic hours, passengers are differentiated on the basis of risk -- with high risk flights from high risk locations receiving appreciably greater Customs scrutiny, while low risk passengers are processed on a spot check basis.

We strongly urge the further testing and extension of the High/Low concept to other U.S. gateway cities. However, the fruits of Customs staffing efficiencies, whenever and wherever achieved, must not be diverted out of the commercial sector but must be dedicated to further improving these passenger and cargo processing functions.

Yet another area of significant potential for increased Customs staffing efficiency lies in expanding the preclearance of United States destined flights. By, in effect, reversing the "funnel" of the Customs Service, Customs personnel concentrated at a relatively small number of foreign locations can benefit from far better utilization rates than those same personnel resources will achieve when dispersed throughout the United States.

Unfortunately, the present preclearance climate in Canada is beset with problems and headed for crisis if these problems are not addressed correctly. The carriers recognize the necessity of their working together with the Customs Service, the Canadian government and all parties of interest to address these problems -- which include ever increasing demand, inadequate facilities and a lack of staff exacerbated by the question of Customs personnel immunity. We look forward to that joint effort, but must rely upon Customs to commence the initiative.

For the longer term as to the United States and Canada, we believe the time is ripe for our two great countries to introduce a joint, shared passenger inspection service along our common border and at appropriate airports such as the present preclearance locations. The example of a host of European nations eliminating similar wasteful duplications of inspection staffs along their borders demonstrates that it can be done. Surely our two nations with their long, unbroken history of peaceful cooperation should be able to do no less.

At other locations overseas, for example in Europe, Customs must be directed to cooperate with Immigration and agree to establish preclearance at appropriate locations. Specifically, Shannon, Ireland, London, England and Frankfurt, Germany. We would be pleased to return at the convenience of this Committee to make a full presentation on the potential for extending preclearance to a number of overseas locations in the 1990's.

FINES AND PENALTIES ENFORCEMENT

No single issue has led to greater carrier consternation than that of Customs' approach to fines and penalties in its enforcement effort. While the carriers fully recognize their responsibilities -- and must expect to be fined in the event of their failure to adhere to regulations -- the current enforcement procedure fails the test of fundamental fairness.

Not uncommonly penalty notices are sent to surety companies, identified by a Customs file number and little more, asserting claims against an airline's bond for cases two, three and more years old. The burden then falls to the carrier to establish the facts by determining through inquiry to Customs the appropriate carrier identifying information and to track back through its records to establish the status of the claim. Last year Customs insisted upon shortening the carrier response time in penalty cases to 30 days while setting no such standard for its issuance of the penalty.

While precise data is not available, we are advised that substantial numbers of these extremely labor intensive inquiries result in a determination that the case was either one involving improper processing by Customs of its own internal paper work or that the case had long since been resolved. We have provided, as an attachment to these comments, a brief summary of the level of errors in Customs liquidated damages claims.

It is our view that action should be undertaken forthwith to halt the presentation of stale claims. Further, we believe that in the future no fine or penalty case should be presented by the Customs service unless it is fully and accurately documented in such a manner as to assure its validity, and to make it readily identifiable to the carrier.

CURRENCY EXPORT RESTRICTIONS

Still another area of contention has developed in the enforcement of currency export restrictions. It has, through the years, become evident that the $10,000 reporting requirement is in conflict with the habits of older travelers from the Far East. Due to cultural differences, language difficulties, lack of credit cards, and lengthy visits, and despite carrier efforts to explain that reporting requirements do not place funds in peril of seizure or taxation, these travelers frequently carry with them unreported amounts in excess of the limit.

This fact, unfortunately, has not gone unnoted by an isolated few Customs personnel more intent on seizure statistics than real enforcement efforts. While clearly these passengers are not in the right, they have been, to use the vernacular, "hassled" with full knowledge that prosecution would never be recommended by the United States Attorney.

While we, of course, do not condone even a technical failure to comply with the law, we would hope that Customs management would recognize the inappropriateness of efforts targeting these travelers. In the longer term we believe that it would be well advised to adjust the $10,000 currency reporting level to account for inflation.

AIR CARRIER SMUGGLING PREVENTION PROGRAM

The airlines share the concern of many other Americans over the use of illegal and harmful drugs and are anxious to be on the forefront of the war against drugs. Although the bulk of illegal drugs are not transported by commercial aircraft, the airlines must continuously be on guard for those who would attempt to smuggle drugs on board. The airlines have, and will continue to, exert every effort within their power to prevent illegal drug trafficking.

In 1986, Congress passed the Omnibus Anti-Drug Abuse Act which significantly increased the fines for transporting illegal drugs. The law also permits seizure and forfeiture of aircraft unless it is established that neither the owner/operator, pilot or any employee responsible for maintaining and insuring the accuracy of the cargo manifest knew, or "by the exercise of the highest degree of care and diligence could have known," that such merchandise was on board.

These are admirable and lofty goals -- ones every air carrier strives to attain. Yet as a matter of reality, airlines in countries where drug trafficking pervades every level of society, and may even be the mainstay of the economy, find it beyond an airline's capability to exercise such control.

When threats on employees' safety and plentiful funds for bribery coexist, it is impossible for a carrier to guarantee that none of these employees, foreign or American, responsible for maintaining the manifest knew, or by the exercise of the *highest degree of care and diligence could have known*, drugs were on board. Given the fact that from the highest levels of government to blue collar workers drug trafficking may be a way of life in certain countries, the airlines have been very frustrated in trying to find a method to guarantee that employees may not have known about a smuggling effort. Further, the size and power of the labor force in countries heavily influenced by the drug trade block airline imposition of work rules which may have a major impact on smuggling.

Despite the airlines best efforts and cooperation with the U.S. Customs Service, Customs levies significant fines on airlines when drugs do get into the United States, even though Customs recognizes that circumstances may have been beyond the control of the airline. Because of the broad nature of the current statute, Customs has applied these fines with vague justification and uneven application. Assessed fines against carriers have in general been between $500,000 and $2 million per occurrence, with some exceeding $5 million.

The airlines want to help deter drug traffic. They do not want any part of illegal drugs. They have gone far beyond what is required to track and find drugs and turn them over to Customs, only to receive enormous fines. To be sure, Customs is aware of all of the dangers involved in doing so. In fact, when the Government of Columbia in cooperation with the airlines asked Customs to come to their country and provide assistance, Customs refused.

The airlines believe that the focus of the war on drugs on commercial airlines should be shifted from the punitive emphasis on simply fining carriers to a serious and realistic effort to prevent the importation of drugs and provide a deterrent to smugglers.

With this need in mind and because of the airlines frustration over the situation, they have proposed language for inclusion in the Omnibus Drug Bill to establish a voluntary program for drug smuggling prevention similar to the current Airlines Standard Security Program governing airlines and airports. The Air Carrier Smuggling Prevention Program proposed by the airlines would require the U.S. Customs Service, in conjunction with the Department of Transportation, to issue regulations to establish procedures for air carriers to develop Customs-approved inspection practices reflecting the drug threat at foreign airports.

Consistent with the standard security program, the inspection procedures would be tailored to the drug environment in individual countries. Individual programs are imperative. Even at the same airport, the same airline may have service from countries which have a major drug problem and others which do not. Thus the inspection needs are different. Uniform procedures to govern all airports and service in like manner would create far more stringent programs than needed in many instances and drain Customs resources needlessly. If a carrier is serving areas where there is little drug problem, it may choose not to submit a plan and abide by the current Customs inspections procedures.

Unfortunately, the response of the Customs Service to this proposal has, thus far, been predictably negative. We would hope that this Committee, as part of its oversight responsibilities, might consider further exploration of this subject.

PROPOSED CUSTOMS RULES

Finally, two recent rulemakings undertaken by the Customs Service are illustrative of the mindset with which we are concerned. In the first of these Customs has suggested that it will require the posting of a bond -- pursuant to a highly debatable legal theory as to its authority to require such a *bond -- which would serve as virtually a summary enforcement* mechanism for $1000 fines for violations of Customs Security Area regulations. Unfortunately, as we have noted to the Customs Service, the underlying program has been so poorly conceived and executed as to make compliance highly subjective and, in truth, a virtual impossibility. The bond requirement will simply make a bad situation worse.

In the second objectionable rulemaking, and notwithstanding an ongoing cooperative testing and development program, the Customs Service has proposed requiring that carriers collect, code and electronically transmit passenger information (Name, Date of Birth and Passport Number) at least one hour prior to their arrival in the United States. Unfortunately, this proposal demonstrates, literally, no concern for either the cost or practicability of such a program from the carrier and passenger point of view. More significantly, it fails to even take note of the substantial cooperative effort undertaken previously; it chooses instead to rely again on a highly questionable legal interpretation to justify giving the Commissioner the authority to require such compliance.

In both instances, as we have noted, the Customs interpretation of its legal authority is of dubious validity. This heightens our concern that if legal principles are not established for the Customs Service in stark, black and white terms, they will inevitably be pushed to extreme limits never intended by Congress.

The first of these proposals has just recently been finalized -- and, unfortunately, but again almost predictably, Customs has dismissed our concerns with perfunctory replies. As to the second proposal, which has not yet been finalized, we hope a more rational analysis will prevail. We cite these examples, as we have our other concerns, to emphasize the point that we want to work with the Customs Service to resolve these kinds of issues. What we do not want -- and what cannot help but prove to be counter-productive -- is for the airlines to be cast in the role of, at best, a nuisance and, at worst, "the enemy" in a Customs culture that emphasizes enforcement without regard to seeking a balanced relationship with the passenger and commercial sector. In this connection, Customs must be counseled to cooperate with its sister agencies, Immigration and Agriculture. The public turf fighting reported in last week's Washington Post must stop, or international arriving air passengers will suffer. (Copies of two of these articles are attached to my prepared statement.)

CONCLUSION

It is worth closing with the thought that in FY89 Customs projects collecting almost $18 in revenue for every $1 it spends. It is this passenger and commercial revenue which funds not only Customs enforcement efforts but a myriad of other government services. That revenue flow can best be protected and enhanced -- as can Customs enforcement effort -- by working in partnership with its sister agencies and with the airline industry, not at odds with them.

Thank you for the opportunity to appear before you today and I would be pleased to respond to any questions.

June 1988

SUBJECT
In Bond System "Misconnects": ATA Analysis

BACKGROUND

We have collected the following information from airlines to demonstrate the paperwork burden and extensive liability which are brought upon them when automated In Bond system files are not closed and the shipments involved are reported on error lists (CEL's) to the origin Customs Districts.

Airline A: 30 prepenalties per month January-April 1988. Estimated liability: $1.2 million. Closed without payment: 95%.

Airline B: 70 prepenalties per month January-April 1988. Estimated liability: $2.8 million. Closed without payment: 95%.

Airline C: 62 prepenalties from one district. Estimated liability: $6.2 million. Closed without payment: 100%.

Airline D: 250 prepenalties from one district. Estimated liability: $2.5 million. Closed without payment: 95%.

"Cases" received on CF5955A - All Causes:
Because they reflect the value of the shipment, liquidated damages claims based on apparent "failure to deliver" in bond merchandise comprise the lion's share of the liabilities incurred by airlines in the "fines, penalties, and forfeitures" (FPF) process. The high rate at which these claims are cancelled without payment is the principal reason for an airline's low payment-to-claim ratio. Examples:

Airline A: 836 cases received in a 6-month period, valued at $5.8 million. Payment rate in 1987: 4%, projected at 5% for 1988.

Airline E: 415 cases and prepenalties received in a 4-month period, valued at $8.3 million. 80% closed with no payment. Overall payment rate less than 5%.

Airline F: At one station, received 60 cases ranging in value between $18,000 and $25,000. Overall payment rate: 2%.

INS, Customs Feud Over Entry Lines at Dulles

By Nell Henderson
Washington Post Staff Writer

Early this morning in the deserted international arrivals area at Dulles International Airport, two squabbling federal agencies were expected to begin a showdown over whether U.S. citizens should have to wait in one line or two when returning to this country.

The Justice Department's U.S. Immigration and Naturalization Service planned today to continue enforcing rules that since May 23 have required citizens entering the country at Dulles to submit passports to the INS and the Treasury Department's U.S. Customs Service.

Customs was scheduled to return to its previous policy of allowing U.S. citizens to bypass the Immigration lines and go directly to the Customs station for passport check, said agency spokesman Dennis Murphy.

Among those who do not like the two-line rule is Customs Commissioner William von Raab, who was caught in it July 10 and "had the unpleasant experience to see the chaos that has developed at the INS lines at Dulles Airport," he said in a letter to Immigration Commissioner Alan C. Nelson.

One Customs official said von Raab described the scene as "bedlam" and complained that the room was so crowded he could barely get off the mobile lounge carrying passengers from their airplane.

Nelson wrote back that Dulles' inadequate space "creates an appearance of confusion." The Metropolitan Washington Airports Authority has broken ground for construction of a larger international arrivals terminal.

Nelson said the airport and airlines did not report any complaints.

"A 100 percent document check and lookout query are the only effective means of meeting the statutory requirement of an immigration examination of all arriving passengers," Nelson said.

Customs officials argued in a long, heated meeting with the INS yesterday that the two-stop process created unnecessary havoc and hassle. After the meeting, INS spokesman Duke Austin said, "We will be inspecting everybody . . . . There is a conflict between INS and Customs."

The two agencies have been fighting for years over the turf of international airline arrivals.

About 330 million travelers enter the country every year, of which about 30 million arrive by air.

U.S. citizens arriving by land do not need to show passports and can enter the country with only a driver's license, Murphy said. However, the Customs and Immigration services both check passports at most airports, he said.

Customs has long argued that the two-stop inspection procedure created unnecessary hassle and delay, and that U.S. citizens with passports should not have to go through Immigration lines.

The Immigration service has argued that Customs may not be detecting many false passports, but at one time, the INS allowed U.S. citizens to go directly to Customs at 12 major airports, including Dulles and Baltimore-Washington International.

Recently, Immigration cut back the Citizen Bypass system to seven airports.

Then on May 23, Immigration and Customs started a 90-day test that required U.S. citizens to submit passports to both agencies when arriving at Dulles and Los Angeles International Airport.

Air Travelers Come Home to Turf War

Customs Calls INS Passport Check at Dulles 'Harassment'

By Nell Henderson
Washington Post Staff Writer

It was rush hour at Dulles International Airport yesterday and Joseph Lacombe was directing traffic through the jammed international arrivals terminal.

"U.S. citizens over here," said Lacombe, port director for the U.S. Immigration and Naturalization Service, motioning as weary travelers poured out of mobile lounges onto the narrow, winding ramp leading to the 11 INS inspection stations.

Three flights from Europe had arrived, unloading 589 passengers within 15 minutes, all of the travelers seemingly unaware that they had stepped off their planes into an ongoing turf war between the INS and the U.S. Customs Service.

Through six of the INS' 11 lanes flowed returning U.S. citizens, who have been required since May 23 to pass through immigration lines at Dulles before picking up baggage and proceeding through customs inspections.

Customs officials expressed willingness yesterday to process U.S. citizens who had not gone through immigration, but the INS made all passengers pass through its lanes first.

Before May 23, U.S. citizens were allowed to skip immigration lines and move directly to baggage claim and customs.

The first flight of the rush had sent passengers into the terminal at 4:35 p.m. All the U.S. citizens had passed through INS by 5 p.m., "and every one of them was run through the computer," Lacombe said of the system, which checks documents within three seconds on average and verifies passport information.

INS officials said their decision to check the passports of all U.S. citizens at Dulles causes no extra delay because most travelers go on to wait for their bags before reaching customs. "Instead of spending 30 minutes in front of the baggage carousel, you spend 15 minutes at immigration and 15 minutes at the baggage carousel," said INS Assistant Commissioner Ronald A. Brooks.

Customs officials contended that U.S. citizens should not have to wait in two lines and that they could move through the airport more quickly if they could skip immigration and just show their passports at customs. "This is basically harassing U.S. citizens," Customs spokesman Dennis Murphy said of the INS policy. "We're boggled by their insistence at trying to do this."

The dispute at Dulles is the latest in a long-running feud between the two agencies, which work side by side at most major airports. About 300 million travelers enter the country every year, about 30 million arriving by air.

Despite the apparently smooth movement through yesterday's rush, the two agencies disagreed completely on how passengers are affected by the two-stop system. Customs officials say they have received numerous complaints from passengers and airlines, while INS officials said there have been no complaints—except one by Customs Commissioner William von Raab, who was caught in the Dulles rush hour last month.

Chairman PICKLE. Now we will hear from Mr. David Poling.

STATEMENT OF J. DAVID POLING, VICE PRESIDENT OF OPERATIONS, DHL AIRWAYS, INC., ACCOMPANIED BY ROBERT FARRELL, DIRECTOR, EXPORT-IMPORT SERVICES

Mr. POLING. Mr. Chairman and members of the House Ways and Means Subcommittee on Oversight, my name is David Poling, and I am vice president of operations for DHL Airways, Inc. With me today is Robert Farrell, director of Export-Import Services and a licensed customshouse broker, who oversees DHL's compliance with U.S. Customs Service procedures and regulations.

On behalf of DHL, we appreciate and welcome the opportunity to present our views on the commercial operations of the U.S. Customs Service.

We are the industry, for example, that enables the financial community in New York and other major cities, through express delivery of critical banking and financial documents, to clear international transactions in hours rather than days or weeks, thus saving U.S. businesses carrying charges and interest that can amount to hundreds of thousands of dollars in particular cases.

We are the industry that enables American manufacturers to deliver samples of their goods to potential customers overseas the day after a marketing call is made rather than weeks later, and that can transmit the documentation to close an export transaction as soon as an agreement is reached.

And more and more often, we are becoming the industry that facilitates the use of competition-enhancing "just-in-time" inventory systems for manufacturing and distribution, both domestically and internationally.

In short, we are the industry that helps America compete in the international marketplace when, in the words of one of our competitors, it's gotta get there overnight.

We would like to take this opportunity to respond to some unfounded charges made during earlier oversight hearings by this subcommittee. These charges, made by organizations representing various customshouse brokers, alleged that the Customs Service has violated the law in providing preferential treatment of express courier companies to the economic detriment of individual brokers. These charges are false and are refuted by the facts. At base, they represent the empty rationalizations of those who are simply unwilling to compete in the marketplace.

It is claimed that Customs somehow does not enforce the law with respect to express consignment companies. But the facts are that DHL and other express consignment companies are rightly held to the same standards as anyone else in the international cargo transportation business.

DHL is subject to the same entry, inspection and clearance requirements and procedures as a traditional freight-forwarder or nonexpress company. DHL provides the same documentation and is subject to the same, if not greater, rate of examination as traditional, nonintegrated freight companies.

The only difference, as explained above, is timing. Because of the need to clear shipments, including intangibles not subject to entry, in time to connect with the integrated domestic transportation link, DHL requires Customs services at nontraditional hours. However, these services are not provided at the expense of any other person. DHL pays for the services it receives by reimbursing Customs for off-hours inspectors.

The real complaint appears to be that DHL is able to effect clearance usually within a narrow window of time necessary to complete express international delivery, while traditional freight or nonintegrated companies frequently cannot. There is nothing sinister here. As an integrated transportation and delivery company, DHL has complete administrative control over all facets of effecting entry on an efficient and expedited basis.

From offloading its own planes or routing the baggage of an onboard courier, express consignments are delivered immediately to a central location for Customs inspection and clearance. There is no need to wait for an independent service to pick up the shipments at its own set schedule.

As a fully licensed inhouse customs broker, DHL does not need to wait for an independent customshouse broker, on his own time, to arrange the documentation necessary for clearance. With ground and air links available to continue delivery to the final destination, DHL does not need to warehouse or store the shipments until an independent contractor is called to pick them up.

In addition to the efficiencies and economies of scale provided by integrated transportation operations, DHL has invested millions of dollars in computer automation and technology to provide detailed advance manifest information to Customs, usually before the plane lands, which allows Customs to effect clearance on an expedited basis.

DHL is also fully qualified on the automated broker interface, [ABI], which allows Customs to predetermine which DHL shipments, upon arrival, are to be held for intensive examination and which can be immediately released.

In short, it is this internal organization and substantial investment in automation, not preferential treatment, that allows DHL to effect clearance on an expedited basis and continue to meet the demands of U.S. business.

Some of those who are not able to provide competitive service have been tempted to seek, by political means, what they cannot win in the marketplace. But rather than intervene in a fundamentally commercial dispute that can and will be resolved by the marketplace, we invite this subcommittee to consider changes in the customs laws that will help advance the ability of U.S. business to compete internationally while strengthening the ability of the Customs Service to enforce the law.

In particular, DHL believes that Congress should consider four things: No. 1, increasing the current merchandise processing user fee to cover the costs of 24-hour-a-day cargo processing. No. 2, expanding the use of expedited informal entry procedures by increasing the statutory threshold for qualifying shipments from the current level of $1,250 to $2,500.

No. 3, increasing the statutory threshold for de minimis value shipments qualifying for exemption from the current level of $5 to

$100. And No. 4, applying a uniform ad valorem duty—for example, 5 percent—on all shipments qualifying for informal entry.

Mr. Chairman, we thank you for this opportunity to present our views on Customs issues that affect the ability of the United States to compete in the world marketplace.

[The statement of Mr. Poling follows:]

Statement of Mr. J. David Poling
Vice President of Operations
DHL Airways, Inc.

Mr. Chairman, and Members of the House Ways and Means Subcommittee on Oversight, my name is David Poling, and I am Vice-President of Operations for DHL Airways, Inc. With me today is Robert Farrell, Director of Export-Import Services and a licensed customshouse broker, who oversees DHL's compliance with U.S. Customs Service procedures and regulations.

On behalf of DHL, we appreciate and welcome the opportunity to present our views on the commercial operations of the U.S. Customs Service as they relate to DHL and the express consignment industry. DHL is proud of the role it plays in the effort to maintain and enhance the competitiveness of American industry, while strictly adhering to the letter of Customs regulations governing the import and export of both goods and documents.

BACKGROUND AND GROWTH OF THE EXPRESS CONSIGNMENT INDUSTRY

DHL Airways, headquartered in Redwood City, California, is the U.S. arm of the DHL Worldwide Express Network. Through its network of over 15,000 employees in 750 offices throughout the world, DHL serves the overnight delivery needs of customers in more than 170 countries. In order to meet the commercial requirements of United States business for express delivery of documents and small packages, DHL provides integrated transportation services from the point of pick-up to the point of delivery. Because of the complete administrative control over the transportation and delivery process -- characteristics which basically define the industry -- DHL is able to provide speed of delivery and reliability that simply cannot be equalled by any other mode of transportation.

As an integrated transportation company, DHL operates its own fleet of jet aircraft, helicopters, and ground transportation, in addition to its use of on-board couriers on scheduled commercial airlines. In order to maintain the administrative chain of control and facilitate entry and clearance of DHL shipments from the approximately 400 international flights that arrive and depart the United States from around the world on a daily basis, DHL also operates as a licensed customshouse broker at each of its ports of entry in the United States. To coordinate its international overnight delivery services in the United States, DHL has established fully qualified brokerage operations at JFK and Miami International Airports on the East Coast, Los Angeles, San Francisco and Seattle International Airports on the West Coast, O'Hare Internatioanl Airport in Chicago, all coordinated through a "hub" facility at the International Airport in Cincinnati.

The tremendous growth of the "express consignment industry" has been facilitated, over the last 10 years, by two significant changes in the legal environment governing transportation services: Deregulation of the domestic air freight marketplace by Congress in 1978, and, one year later, regulatory action by the U.S. Postal Service -- acting under the guidance of Congress -- which exempted "time sensitive" business documents from the scope of the postal monopoly. Airline deregulation allowed new companies to enter the air freight business and encouraged creative solutions -- including use of integrated transportation systems -- to meet increasing customer demand for express "door-to-door" delivery. The administrative exempti n from the Private

Express Statutes -- which define the limits of the postal monopoly -- enabled private couriers to compete with the Postal Service in the overnight delivery market for time-sensitive business documents of all kinds.

This positive Congressional and administrative action created a regulatory environment in which express consignment companies are encouraged to meet the growing demands of American business for domestic and international overnight delivery. We are the industry, for example, that enables the financial community in New York and other major cities -- through express delivery of critical banking and financial documents -- to "clear" international transactions in hours rather than days or weeks, thus saving U.S. businesses carrying charges and interest that can amount to hundreds of thousands of dollars in particular cases. We are the industry that enables American manufacturers to deliver samples of their goods to potential customers overseas the day after a marketing call is made rather than weeks later, and that can transmit the documentation to close an export transaction as soon as an agreement is reached. And more and more often, we are becoming the industry that facilitates the use of competition-enhancing "just-in-time" inventory systems for manufacturing and distribution, both domestically and internationally. In short, we are the industry that helps America compete in the international market place when, in the words of one of our competitors, "it's gotta get there overnight."

The international express delivery industry has paralleled the growth of U.S. participation in the international market for goods and services, although the growth of particular express consignment companies has often taken different paths. Some companies started, for example, as freight carriers and freight forwarders that have moved into the express consignment business. Others have started as domestic trucking companies and, with the advent of deregulation, moved into the international air cargo business. In our own case, DHL began as an international on-board courier service, using scheduled passenger airline flights to move documents overnight between the United States and offshore locations. DHL still sends couriers as on-board passengers on scheduled international flights, carrying documents as "baggage." Today, however, DHL has expanded to meet domestic and international demand, carrying containerized documents and small packages on commercial airline flights, as well as operating our own aircraft in the United States as an F.A.A.-certified U.S. domestic air freight carrier.

THE ROLE OF THE U.S. CUSTOMS SERVICE: FACILITATION OF INTERNATIONAL COMMERCE AND ENFORCEMENT OF THE CUSTOMS LAWS

The issue for today, of course, is the commercial operations of the U.S. Customs Service as they relate to the express consignment industry. DHL believes that issue must be defined by two sets of priorities:

-- To meet the needs of our customers for expedited delivery of documents and small packages, DHL must have the ability to clear Customs as quickly as possible, including use of Customs' services at "odd-hours". Indeed, the hours of 9:00 a.m. to 5:00 p.m. are usually the least busy of the 24 hour day in which express consignment companies must operate. To ensure that hub connections and transfers are made, it is usually necessary to have Customs inspectors available to clear shipments in the middle of the night.

-- To succeed in its operational mission, U.S. Customs must insist on strict compliance with customs laws and regulations intended to ensure the proper collection of customs revenues; administration of restrictions on the import or export of certain merchandise, such as textiles and articles subject to export controls; and interdiction of imports or exports of contraband.

Experience has shown that these two sets of priorities are not inconsistent. DHL believes they should be viewed as complementary.

I must say that, from DHL's perspective, Customs has taken its operational mission seriously and, ever since the very beginning of our industry, has required strict adherence to customs law and regulations. We are required, on every customs entry we make, to "dot every 'i' and cross every 't'"; on restricted items such as textile quota merchandise, we must take the steps necessary to see that the quota is open and inspection has taken place before the goods are released; even in regard to that large portion of our business represented by business documents -- which as "intangibles" are not subject to customs entry -- the Customs Service requires that we make those shipments available for inspection to guard against the importation of contraband.

I would also like to state for the record that this is an interest that we fully share with Customs. DHL has a strong business interest in policing its own system to prevent the shipment of contraband or restricted merchandise and to see that those who would violate the law are stopped. As I said at the outset, DHL is proud of its role in facilitating international trade and the international flow of business information. We are proud of our reputation and our record of cooperation with the Customs Service and U.S. law enforcement agencies in preventing use of our system for transport of any illicit traffic. In addition to violating U.S. law, such traffic is a clear violation of the terms and conditions of the DHL air waybill; i.e., it is a breach of contract by the shipper. This is of no small consequence. Under express terms of carriage, DHL reserves the right to inspect any shipment, and, indeed, exercises that right to see that our network is not used for illegal or improper customs purposes. We have established our own internal security procedures and in-house customs compliance programs, administered by a Director of Security, to detect contraband and protect the integrity of our network. And, we are constantly working with Customs and other law enforcement agencies to improve and strengthen our security procedures. On the issue of keeping contraband out of the United States, our interests and those of Customs coincide.

At the same time, we are working with Customs on our other set of priorities: to improve our ability to clear shipments through Customs as quickly as possible, consistent with the requirements of law enforcement, to meet the needs of our customers for expedited delivery of documents and small packages. For example, we are strong supporters of Customs' efforts to automate and streamline entry procedures and to reduce, through electronic means, the proliferation of paper that traditionally has accompanied the flow of international trade. We were early participants in the Automated Brokerage Interface ("ABI"), and we are working with Customs to improve its entire Automated Commercial Service ("ACS"). As these oversight hearings have made clear, Customs has two roles to play in today's commercial age: it must, on one hand, enforce the laws governing the import and export of goods into and out of the United States, and, on the other hand, it is required to facilitate the flow of international trade. In an age of limited enforcement resources, DHL continues to believe that automation is the best way for Customs to play both roles successfully.

To achieve its dual objectives, Customs must have adequate resources. To that end, DHL contributes in two important respects. First, it pays Customs directly, pursuant to 31 U.S.C. § 9701, for extraordinary services provided by Customs, including dedicated inspectors provided for clearance of DHL shipments at odd hours. And second, DHL pays user fees to the Customs Service, set by Congress pursuant to 19 U.S.C. § 58c(a)(10), to cover the cost of Customs' commercial operations. Indeed, DHL believes that Congress should consider raising the applicable commercial user fees, in accordance with the principles of the General Agreement on Tariffs and Trade ("GATT"), to cover the cost of 24 hour a day cargo processing by Customs. This of course would eliminate the need for DHL to reimburse Customs for dedicated inspectors at odd hours, but would also make plain that rapid Customs clearance at any hour is available to anyone whose business requires it. The world of international commerce does not sleep and, indeed, the ability of the U.S. to compete in the international marketplace may require continuous coverage.

THE U.S. CUSTOMS SERVICE RIGOROUSLY ENFORCES THE CUSTOMS LAWS AND DOES NOT DISCRIMINATE IN FAVOR OF EXPRESS CONSIGNMENT COMPANIES

Mr. Chairman, in addition to explaining who we are and the increasingly important role we play in international commerce, we would like to take this opportunity to respond to a number of unfounded charges that were made during earlier oversight hearings by this Committee. These charges, made by organizations representing various customshouse brokers, alleged that the Customs Service has violated the law in providing "preferential treatment" of express courier companies to the economic detriment of individual brokers. These charges are false and are refuted by the facts. At base, they represent the empty rationalizations of those who are simply unwilling to compete in the marketplace.

It is claimed that Customs somehow does not enforce the law with respect to express consignment companies. But the facts are that DHL and other express consignment companies are rightly held to the same standards as anyone else in the international cargo transportation business. DHL is subject to the same entry, inspection and clearance requirements and procedures as a traditional freight forwarder or non-express company. DHL provides the same documentation and is subject to the same, if not greater, rate of examination as traditional, non-integrated freight companies. The only difference, as explained above, is timing. Because of the need to clear shipments, including intangibles not subject to entry, in time to connect with the integrated domestic transportation link, DHL requires Customs services at non-traditional hours. However, these services are not provided at the expense of any other person. DHL pays for the services it receives by reimbursing Customs for off-hours inspectors.

The real complaint appears to be that DHL is able to effect clearance usually within a narrow "window" of time necessary to complete express international delivery while traditional freight or non-integrated companies frequently cannot. There is nothing sinister here. As an integrated transportation and delivery company, DHL has complete administrative control over all facets of effecting entry on an efficient and expedited basis. From offloading its own planes or routing the baggage of an on-board courier, express consignments are delivered immediately to a central location for Customs inspection and clearance. There is no need to wait for an independent service to pick up the shipments at its own set schedule. As a fully licensed in-house customs broker, DHL does not need to wait for an independent customshouse broker, on his own time, to arrange the documentation necessary for clearance. With ground and air links available to continue delivery to the final destination, DHL does not need to warehouse or store the shipments until an independent contractor is called to pick them up.

In addition to the efficiencies and economies of scale provided by integrated transportation operations, DHL has invested millions of dollars in computer automation and technology to provide detailed advance manifest information to Customs -- usually before the plane lands -- which allows Customs to effect clearance on an expedited basis. DHL is also fully qualified on the Automated Broker Interface ("ABI") which allows Customs to predetermine which DHL shipments, upon arrival, are to be held for intensive examination and which can be immediately released. In short, it is this internal organization and substantial investment in automation -- not "preferential treatment" -- that allows DHL to effect clearance on an expedited basis and continue to meet the demands of U.S. business.

Some of those who are not able to provide competitive service have been tempted to seek, by political means, what they cannot win in the marketplace. In particular, it was also alleged during the earlier hearings that courier companies are "ignoring" statutory requirements with respect to who may enter goods into the United States. Such charges, however, are based on a misreading of the "right-to-make-entry" statute. Some of the groups that testified last June seemed to suggest that only an "owner" or "purchaser", or a broker appointed by the "owner" or "purchaser" may enter goods into the United States. In point of fact, Section 484 of the Tariff Act of 1930, as amended by P.L. 97-446, expressly provides:

> When an entry of merchandise is made... the required documentation shall be filed either by the owner or purchaser of the merchandise or, when appropriately designated by the owner, purchaser or consignee of [the] merchandise, a person holding a valid [brokers] license.

19 U.S.C. § 1484(a)(1)(c).

The confusion, if any, may be caused by the term "consignee". Some of the groups that testified recently would have this committee believe that it is synonymous with the term "purchaser" or "owner". But under established customs practice, the consignee for entry purposes has always been the consignee named in the carrier's air waybill or bill of lading. See Top Form Brassiere Mfg. Co. v. United States, 342 F. Supp. 1167 (Cust. Ct. 1972). In order to facilitate entry of imported merchandise and to insure against fraud against the Government, Customs entry procedures have always distinguished between the "consignee" for purposes of entry and the actual owner or "ultimate consignee" of imported merchandise. As the court in Top Form observed, "[t]he government is not called upon to hunt up any ultimate consignee, when there is a primary consignee to whom the goods are sent, and who himself presents the invoice, makes the entry, receives the bill of lading, and gets the goods; thus being himself their 'importer'". Id. at 1171. This principle remains unchanged -- and thus implicitly endorsed -- by the 1983 amendments to the Tariff Act of 1930 governing the entry of merchandise. See Pub. L. No. 97-446, § 201, as codified in, 19 U.S.C. § 1484.

In the course of its business, DHL acts as consignee and importer of record as a condition of its contract with the shipper. As we have explained, DHL is a fully licensed customs broker and thus is empowered by statute, as well as by its contract with the shipper, to effect entry. In certain circumstances, DHL accepts conditions specified by the shipper to use a broker other than its own or to effect entry at a specifically designated port. However, these conditions are entirely a matter of contract law. The brokers' argument, in the final analysis, is a non-starter: there is simply no violation of the statute governing the "right to make entry".

The brokers' complaint regarding who has the right to make entry needs no Congressional intervention here. It is a matter which can be fairly and fully governed by commercial law and practices. If there is any reason for an "ultimate" consignee to utilize the services of a particular broker or port of entry, this, of course, may be achieved, and protected, by contract between the "ultimate" consignee and the shipper. Should the shipper fail to observe any condition of his contract with the "ultimate" consignee -- including failure to use a specified broker or port of entry -- the "ultimate" consignee would have a right of action against the shipper for breach of contract.

At the same time, the shipper has a right (where it is not limited by agreement with the ultimate consignee) to contract with a courier on terms subject to mutual bargain, including terms that provide that the carrier may act as the consignee with the right to designate a broker of its own choosing.

RECOMMENDATIONS TO MODERNIZE CUSTOMS PRACTICES

Rather than intervene in a fundamentally commercial dispute that can and will be resolved by the marketplace, we invite this committee to consider changes in the customs laws that will help advance the ability of U.S. business to compete internationally while strengthening the ability of the Customs Service to enforce the law. We think this can best be accomplished by further simplifying entry procedures for low-value, low risk items, thus freeing up Customs' limited resources for attention to higher-cost, higher-risk items, as well as items subject to quota or other import restrictions.

In addition to the changes in the user fee suggested above to cover the costs of 24 hour a day cargo processing, DHL believes that Congress should also consider:

1. Expanding the use of expedited informal entry procedures by increasing the statutory threshold for qualifying shipments from the current level of $1250 to $2500. *See* 19 U.S.C. § 1498.

2. Increasing the statutory threshold for "de minimis" value shipments qualifying for exemption from entry documentation from the current level of $5 to $100. *See* 19 U.S.C. § 321.

3. Applying a uniform ad valorem duty -- e.g., 5 percent -- on all shipments qualifying for informal entry.

CONCLUSION

Mr. Chairman, we thank you for this opportunity to present our views on Customs issues that affect the ability of the United States to compete in the world marketplace. In sum, we believe that Congress should encourage further modernization of Customs' procedures and regulations, while assuring that the Customs Service has the necessary resources to perform its enforcement responsibilities and fulfill its statutory missions. We would be pleased to answer any questions.

Chairman PICKLE. We thank you.

Mr. Poling, I will ask you, since you just testified, have you passed on to Customs your recommendation for increasing the user fees?

Mr. POLING. Yes, sir. They think it is a good idea, in general.

Chairman PICKLE. I didn't hear you.

Mr. POLING. I would say in general, they think it is a good idea.

Chairman PICKLE. Well, that is a very interesting proposal. If you had the funds, then you would say you could give 24 hours' service instead of up to 11 or whatever time they cut off. Because the international trade doesn't stop on an hour, is that correct?

Mr. POLING. That is correct. It does not stop at all.

Chairman PICKLE. Well, now, Mr. Poling, some of the brokers and couriers have complained about, in the last hearing, about some of your operations. We have a statute here on the books that says that a carrier—that importers may choose whatever licensed broker that they want. Is your operation in any way preventing a choice of the broker?

Mr. POLING. No, sir. We believe that contract law stipulates that the shipper enters into a contract with the carrier, that being our company or a company of our type, and that there is, under the conditions of carriage, either an implied or express right for the carrier to act as importer of record and thereby provides the carrier with a power of attorney to select whatever broker the carrier wishes.

The importer—the eventual importer—has the right to enter into an agreement with the customshouse broker, and to direct the shipper to cut a deal, whatever he wants. That is, the importer may contract with the shipper to stipulate that his broker will be used as the customshouse broker with respect to a particular transaction.

Chairman PICKLE. On the accusations made earlier, I guess Customs has unfairly provided DHL with special services in the processing of your cargo; is that correct?

Mr. POLING. No, sir, we don't believe there is anything unfair about it. What Customs does for us, they don't do differently for anyone else.

Chairman PICKLE. I would assume that time is the very essence of your operations. If it has got to be there overnight or next morning, guaranteed mail, I have often wondered in the interest of speed and time alone, does that allow for proper examination? Is this a problem in your area?

You are the international shipments, not just on a domestic basis, but an international basis. Is there a problem?

Mr. POLING. We don't believe it is a problem at all, sir. We provide the information in advance to Customs to select whatever they want to look at. We do not release anything before Customs has had an opportunity to look at the goods or to pass judgment on whether the goods are properly—or that the documentation is properly prepared, and what we do do, however, is move in the fastest possible means to get the goods to the customer.

Chairman PICKLE. Well, apparently, you pay these inspectors directly, is that correct?

Mr. POLING. When they are working off-hours, yes, sir.

Chairman PICKLE. And if they work overtime or render a special service, you may pay them extra? Has this been done in conformity with regulations? That is, Customs understands that, and they permit that?

Mr. FARRELL. Yes, sir. With the hub-type operations that the air express companies have, as David has mentioned, we are working during the night, completely through. These inspectors are paid on a reimbursable basis by the U.S. Customs Service. I am referring to a hub-type operation inland. At the traditional gateways, we are a part of the regular user fee compensation structure, which pays the inspectors that are performing their duties at the gateways.

Chairman PICKLE. I assume that you are trying to process your goods. You and the shipowners, electronically and have a paperless approach to the movement of goods, and that is your objective, almost above any other procedure today, is that correct or an oversight?

Mr. MAY. I would say that is correct from our standpoint.

Mr. POLING. It is true from ours, also.

Mr. MAY. Ships are slower than airlines, but premium service, which the American liner operators particularly provide, is a very high-speed service, and we simply couldn't do it without electronic equipment.

Chairman PICKLE. Well, as trade increases and you said that the growth of containerized import has increased about 17 percent just in the last year your contention is that since it is increasing, the only way you can handle the goods is to do it electronically, and therefore, you insist that we develop a system that can actually move goods in a sort of a paperless environment.

And I guess that is taking precedence almost over anything you want done, including inspection. Is that a true statement?

Mr. MAY. It is certainly one of the highest priorities. I think it is important to remember, that we are in a dynamic environment. There is a constant process of change. In just the last several years, we have reached the point where a container ship no longer deposits a container in a yard where it is left for sometime until a trucker or a rail line can pick it up.

Today, the objective is that when a container crane lifts a box with 20 or 30 tons of cargo in it off the ship, it goes directly onto a flat car or onto a truck bed so that an hour after it is lifted off the ship, it may be 20 miles outside of the port.

You simply cannot handle that type operation and keep track of all of those boxes without very efficient electronic data processing. And Customs has to have compatible equipment or the whole system will not work.

Chairman PICKLE. Even though we are making great progress now in the field of paperless procedure, and we are going more and more to the ACS system and to automatically processing these goods. You have a complaint that you still have to furnish Customs with a hard copy, as you say, of the bill of lading.

How can Customs not have a hard copy bill of lading? Would you do away with that entirely?

Mr. TAYLOR. Mr. Chairman, basically the information that is contained on a bill of lading or export declaration is contained within the system. It is only because of the existing regulation in law that requires a hard copy document be submitted.

What we are advocating is that the whole trade process from beginning to end be addressed not only by Customs, but the industry as a whole, a wholesale examination in conjunction with Congress to reassess the law.

Chairman PICKLE. Well, I don't think you have answered my question. If you complain that Customs, that you still have to furnish Customs with a hard copy of your bill of lading, the question is this, because Customs hasn't updated its electronic system, or just because they are hard-nosed and say we want a written copy?

Mr. TAYLOR. No, it is the law. A statutory requirement that a hard copy be submitted. We are submitting all of the information electronically, days in advance of the arrival of a vessel and prior to any movement.

Chairman PICKLE. You are saying you could submit a hard copy electronically instead of on paper?

Mr. TAYLOR. We do today. A vessel will come in——

Chairman PICKLE. If Customs updated its equipment and system, they could do that electronically if they amended their procedures?

Mr. TAYLOR. Well, yes. In fact, we do, that is what I am saying, we do submit electronically from our computer to Customs' computers up to 2,000 bills of lading per vessel, but in addition, we are still required to submit a hard-copy document for every one of those shipments.

Chairman PICKLE. Before I yield—pardon me, had you finished?

Mr. TAYLOR. Yes.

Chairman PICKLE. Mr. Landry, you seem to indicate that Customs has put almost their whole emphasis on enforcement, more so than the processing, and that there are times that enforcement and staffing is a real problem. Is it a real problem?

Mr. LANDRY. It continues to be a problem, unfortunately, Mr. Chairman. I cited the example of the one carrier seeking clearance of a flight from Toronto to Los Angeles. That was just one of several carriers denied clearance of flights of that nature.

Chairman PICKLE. If you had enough personnel, they can clear it. Wouldn't the clearing on the Toronto flight—that left at 11 o'clock at night and didn't arrive until the next morning, was that the problem?

Mr. LANDRY. They didn't have the staffing or ability to clear it. They felt that, so they denied the plane for preclearance at Toronto and for postclearance on landing at Los Angeles at 1 a.m. That was a flight being scheduled——

Chairman PICKLE. How would that problem—as I recall it, they finally said the flight would stop in Detroit.

Mr. LANDRY. That is right.

Chairman PICKLE. How is that going to help it, stopping in Detroit instead of Los Angeles? What is the difference?

Mr. LANDRY. Apparently they have the staff available in Detroit, Mr. Chairman. The unfortunate aspect, of course, there is a fair amount of expense to the airline landing and taking off again at Detroit, but considerable inconvenience, tremendous inconvenience for the 250, 260 passengers who have to get off the aircraft in Detroit with their baggage, be cleared in Detroit, and get back on the airplane.

They want to go to LA as quickly as possible. We feel that facilitation and Customs enforcement are not mutually exclusive. They should be mutually inclusive. If you concentrate your security, your scrutiny on the high-risk flights as is done in the high-low concept at Miami, then you can expedite the flow of 90 percent of the traffic.

Chairman PICKLE. If the plane left at 11 and stopped at Detroit at, say, 2 o'clock in the morning, or whatever time, why would it be Detroit could handle the processing at that hour, and Miami couldn't? Why couldn't both airports handle the processing? If you are going to inspect cargo and passengers at Detroit, why couldn't Customs do the same in Los Angeles?

Mr. LANDRY. Apparently it was staffing availability. We appreciate the high-level intervention at the last moment to get that flight cleared some place. At one time it looked like it was going to be a flight without a country, with no destination. It is being cleared. But that the clearance should be responsive to demand.

That is why people are paying the $5 tax.

Chairman PICKLE. I guess what you are saying to me again is that the emphasis is on enforcement. That has become more adversarial, confrontational than it has been in the processing of the goods. A lot is because of understaffing.

Mr. LANDRY. That is a good share of it. Perhaps the preponderance of staffing emphasis is on enforcement rather than facilitation.

Chairman PICKLE. Now, Mr. Schulze.

Mr. SCHULZE. Thank you, Mr. Chairman.

Mr. Landry, does the law or Customs regulation impose on air carriers any liability for the presence of narcotics which might be concealed in passengers' luggage?

Mr. LANDRY. Yes, Customs does. And we have been subjected, of course, to a great many fines in that regard.

Mr. SCHULZE. Are the carriers then required or obligated to turn this baggage over to Customs?

Mr. LANDRY. This is the unaccompanied baggage you are talking about, I assume, Mr. Shulze. Yes, we do turn it over to the Customs Service.

Mr. SCHULZE. If a carrier turns this unaccompanied baggage or luggage over to the Customs Service and through the process narcotics are found in that luggage, are the carriers ever fined because they cooperated?

Mr. LANDRY. That is what has been happening, Mr. Schulze. We think that is grossly unfair. It is something that clearly the carriers have no way of knowing—that this unaccompanied baggage does contain drugs. The state of the art technology is not yet there to have the drugs detected. We don't have police powers. We can't perform law enforcement functions, and, therefore, I think here where we are trying to do our best job, where we are offering to be the eyes and ears of Customs and we are trying to cooperate, we need intelligence to tell us where the risks are.

Mr. SCHULZE. A week or so ago I asked the Acting Commissioner of Customs whether this ever happened and she replied no, that it does not happen where an airline cooperates or that she was not aware and the Commissioner was not aware.

Would you say the Commissioner is not aware at the highest levels that this is happening?

Mr. LANDRY. Oh, yes. We have—we are very proud that back in March of 1985 we entered into a cooperative agreement, which I think was unprecedented in the private sector, between all of the airlines and the Commissioner of Customs, to serve as eyes and ears and in return to get the intelligence that is necessary to identify the high risk flights where we can try to help them detect drugs.

Then a number of carriers have also entered into individual carrier initiative agreements.

Mr. SCHULZE. What are air carrier initiative agreements? Will you explain that?

Mr. LANDRY. They are individual agreements that really complement the overall industry agreement entered into back in March of 1985. They have been entered into largely at the regional levels between individual carriers and the regional commissioners.

And, as I say, it is to offer every bit of cooperation within the reach of our legal powers to help the Customs Service. In return for that, what we have asked for is advance intelligence, which is absolutely critical to a drug interdiction effort, and we asked for that in the hope that that will help us identify the high-risk flights where we can train our eyes and ears even more.

Mr. SCHULZE. What if these agreements are in effect and there is good cooperation and narcotics are discovered, are there still fines imposed by Customs?

Mr. LANDRY. I am sorry to say there are. There was one instance, for example, just 3 weeks after a major carrier had entered into a carrier initiative agreement with the Customs Service. Even though it had not yet been able to put all of its security procedures into effect, and even though the Customs Service had not provided them with intelligence that you have a high-risk flight you are dealing with there, they discovered some marijuana on the flight and they were fined or subjected to at least the threat of a $1 million fine. I am not sure how that case came out.

Mr. SCHULZE. In your opinion then, are the air carrier initiative agreements between carriers and the Customs working? Is it something we should pursue or eliminate?

Mr. LANDRY. I don't think they should be eliminated. I think what actually—what we are suggesting now is that you create this air carrier smuggling prevention program, which we think ought to be added to the omnibus drug bill in the form of legislative language, that would create a regulatory environment which could allow the carrier—much the same as they do in the security area today, to work with the Customs Service on high risk flights and so forth, and do a postclearance, for example, do the scrutiny here in say Miami Airport when the aircraft arrives, if as the Customs Service has found, as the airlines have found, it is not always possible to detect the drugs or perhaps it is not always healthy to detect the drugs down in Bogotá.

Mr. **Schulze**. In view of your past relationship with Customs, do you think this would work? If you could get that kind of agreement, do you believe they would cooperate?

Mr. **Landry**. I think if you could—if the Congress could introduce those provisions into the law and a regulation were enacted, I think, yes, we can work with them and have it work.

We want to do our part in the war against drugs, within the limits of our legal powers.

Mr. **Schulze**. Thank you Mr. Landry. Thank you, Mr. Chairman.

Chairman **Pickle**. Mr. Chandler.

Mr. **Chandler**. Thank you, Mr. Chairman.

Mr. Poling, last June Carl Solar representing brokers at JFK, testified that for at least the past 8 years the Customs brokers doing business in the United States have had to keep with an ever widening disparity between the way Customs treats customs brokers and the courier express delivery and door-to-door delivery services.

I take it that when you testified suggesting that you weren't receiving preferential treatment, it was that testimony to which you are responding.

Mr. **Poling**. Yes, sir.

Mr. **Chandler**. Can you tell me a little more about your business, the airports that you regularly enter, and what are the countries from which you bring most of the packages that are in transit, internationally.

Mr. **Poling**. Congressman, we import from 170 countries into the United States, and we enter the major ports of New York, Miami, Chicago, Houston, Los Angeles, San Francisco, and Seattle.

In every instance, we have a customs broker operation. Bob happens to be the director of that operation, but we have a licensed custom house broker at every one of our locations.

In some cases, more than one. The shipments that come in are coming from a variety of flights, generally, commercial flights, but we have our own aircraft coming from Panama, coming from Toronto to Cincinnati to our hub. In addition, we have a charter flight that we share with Sabena Airlines and the post office that comes from the hub we have in Brussels to New York.

We are bringing goods in from many, many countries every day and virtually all hours of the day and night.

Mr. **Chandler**. Most of it is on regularly scheduled airlines, not your own airplanes?

Mr. **Poling**. I don't know the percentage, but I would say, based upon the quantities we bring in on our charter operation, probably half is brought on our own aircraft.

Mr. **Chandler**. I see. In response to the chairman's question, you said that you paid directly the customs officers that provide the service?

Mr. **Poling**. No. We pay to the Customs Service, not directly to the officers.

Mr. **Chandler**. Do you also provide facilities, office space, for the customs?

Mr. **Poling**. Yes, we do.

Mr. **Chandler**. In each of those ports you mentioned?

Mr. **Poling**. Yes.

Mr. **Chandler**. Have you ever sensed there is a pressure on you to provide better facilities, that are a little nicer and a little better service?

Mr. **Poling**. I don't think there has been any pressure on us. We are in the process of building a brandnew building in our hub in Cincinnati and we are providing adequate space to enter hopefully into a model hub-type operation for the Customs Service. It is important for us they be able to do their job in a timely fashion.

Mr. **Chandler**. Mr. Donohue, a question about the disparity of service between ports. What are your thoughts? What are your members telling you about that subject?

Mr. **Donohue**. The disparity in terms of the way in which the law is enforced?

Mr. **Chandler**. Well, that or simply expedited procedures. Obviously, if you can get your cargo across the dock or through the airport more quickly in Cincinnati than in Cleveland, Cincinnati will get the edge.

The same with the dock at Long Beach or Seattle.

Mr. **Donohue**. To be very honest, our members haven't really complained as to a great disparity in terms of service. Some ports are more efficient and some ports are more efficient in terms of answering a question on classification or value.

To some extent in the area of enforcement, there may be somewhat of a disparity which perhaps is reflective of the attitude of the particular director at one port over another port. But I can't say that we noticed a significant difference in the manner in which the law is administered between or among regions or districts.

Mr. **Chandler**. I would address this to all of the panelists. In terms of just simple staffing levels, I know in Seattle a few years ago the staffing level was so low, that there were significant slow downs, especially at Seattle-Tacoma Airport. Do you know of other ports or airports in the United States where staffing levels have become so insufficient, that it has slowed down service, giving an advantage to others that are better staffed?

Mr. **Landry**. I mentioned in my statement that one of our major carriers has found that clearance of its wide-body flights in some airports is taking 59 minutes and in another case, 145 minutes for that flight on an average.

That is way beyond, obviously, the target that Congress established of 45 minutes.

Mr. **Chandler**. Do you think that is a staffing level problem?

Mr. **Landry**. That is considerably based upon staffing level problems and the irony, of course, is that the Congress imposed that $5 tax in the desire to clear up that problem once and for all, that the service would be available when it was needed, where it was needed.

It is not happening everywhere.

Mr. **Chandler**. OK. Thank you, Mr. Chairman.

Chairman **Pickle**. Thank you, Mr. Chandler.

I would say, Mr. Poling, you are satisfied with Customs and their operations. You operate on a specified basis, and although Customs, ports, may not be open all during the night, you saw that they process all your goods and you do that by paying the customs experts time and a half. Otherwise you couldn't ship your goods in the dead of the night when others get stopped.

I presume your general feeling is that Customs is cooperating and doing a good job. Although I notice your three recommendations are very, rather unusual, and far reaching.

We will contact Customs because if you said they thought it was a good idea, we want to follow through on that. We would like to see why in your case your goods got processed.

The rest of you gentlemen are saying to me, as I get it, that they—Customs ought to update their electronic processing more. They ought not put such emphasis on enforcement, that it's more adversarial and confrontational than it need be and they are understaffed.

Is that correct, or do you all want to take issue? I guess what I am trying to get at, in your opinion, is Customs understaffed and are they not up to date with their electronic processing, or do they need more personnel, or are they arbitrary or too arbitrary?

Mr. **ABLE**. Mr. Chairman, Customs does lack adequate staffing where training and education to move from today's manual to automated systems is concerned. It is very difficult to do since the U.S. Customs Service has 20,000 to 30,000 people and only a small group of trainers, a handful of trainers. In addition they are not given sufficient time to sit in the port and train people properly.

So what you have is trainers coming in and training 100 quickly and then leaving a management that is not happy with the training. It is my experience in doing the training for our company on the same system that you definitely need adequate staff and adequate time allowed to do the training.

Chairman **PICKLE**. Well, you are saying they need more training as well as more personnel. We have your written statement and your suggestions, and your analyses.

We are trying to find out is Customs doing its job properly? Do you need help, or are they doing a perfect job, and we need your testimony on your thoughts. You are the people in the middle of transporting cargo.

Mr. **TAYLOR**. Mr. Chairman, if I can say on behalf of the ocean carriers which transport the bulk of all cargo coming in and out of this country—and I won't address the passengers—we do not do that. Basically, we have had a cultural change within this country within the last 8 to 10 years which moved transportation and the trade process and the physical importing, exporting of goods from a manual to electronic system.

Customs initially tried to retrain people by using only their own internal resources. The ocean carriers were also manual, but they have come through this cultural change to electronic systems. What we are fast approaching is that ACS as it has been developed today needs to be reevaluated and by applying new and better technologies whether it be communications, software or hardware, and working together on a team effort to address a new process, so that we deal with information on an early advanced basis rather than an actual as received cargo basis.

Historically, it has been approached that way. Theoretically, 47 percent of the information required to bring goods in and out of countries is known months in advance of the arrival—indeed before manufacturing or shipment. We need to begin to use that early information to facilitate movements as well as to use that information for enforcement, whether it be contraband, narcotics, patent infringements or whatever.

What we are suggesting is for Customs to work on that. I believe there is a committee that will be appointed to oversee the whole Customs operation. That committee should be charged with addressing that problem and the whole trade process because we have an opportunity as traders and as businessmen and as government, and if we do it and do it today, we can assist not only our country, but the other countries in putting together an international process that will bring down barriers.

Chairman PICKLE. All right. Thank you.

Any other comments? Mr. Donohue.

Mr. DONOHUE. Mr. Chairman, with respect to staffing, I would like to touch on one area that hasn't been discussed. That is staffing within Customs headquarters in the Office of Regulations and Rulings. It is one thing to clear the merchandise. That, of course, is the area of inspection and cargo control. That is important.

Of equal importance is the legal classification or valuation or quota or marking status of the merchandise. We have experienced significant delays in getting binding rulings from Customs, either though Customs headquarters or to a lesser degree, from the national import specialist in New York.

This problem is only going to escalate when the harmonized system becomes law in January of 1989. Then we have a new system of classification. If there is one area that I would ask this committee to look at, it is staffing within the Office of Regulations and Rulings so there could be some mechanism whereby expedited treatment could be given and rulings could be obtained so that an importer is not importing without knowing what will be the final classification for months and months and months.

Chairman PICKLE. Well, delay is important for everybody.

Mr. DONOHUE. Yes, Mr. Chairman.

Chairman PICKLE. All right. We have a lot of questions that we want to submit to you and we will be submitting some in writing. We want quick answers from you and we want honest answers because if we are going to have any kind of changes or improvements in the system, we need to know directly from you what needs to be done.

Any degree of silence on your part is going to just make our own operation more difficult. If you feel that Customs has been—is arbitrarily or is neglectful or is understaffed and there are delays occurring, we want to know where and in what category so we can take a look at it.

We need that information from you more than anybody else. We are going to ask you to keep us informed as we go forward on these hearings.

I thank you very much for your testimony. That will complete the testimony for this panel. Thank you.

Panel No. 3 will consist of James J. O'Brien, Richard Judy, Richard Leach, and James K. Gordon. If you gentlemen will come forward. James J. O'Brien is the deputy executive director of the Port of Oakland. Richard Judy is director of aviation of the Miami

International Airport. Richard Leach is president of Port of Houston Authority and is a spokesman today for the American Association of Port Authorities. James K. Gordon is the representative for the Airport Operators Council International and he is director of the international affairs.

STATEMENT OF JAMES J. O'BRIEN, DEPUTY EXECUTIVE DIRECTOR, PORT OF OAKLAND

Chairman PICKLE. Our first witness is James J. O'Brien, Port of Oakland. Mr. O'Brien.

Mr. O'BRIEN. Thank you, Mr. Chairman. Good morning, members of the committee. I thought it might be helpful in a summary fashion to describe what the characteristics of the international surface transportation are today because I believe that relates directly to some of the issues that are the subject of this hearing.

Today we have a rapidly evolving international surface transportation system which is a highly integrated, extremely complex logistical system, consisting of small container ships operating overseas called feeder vessels which collect cargoes at a large number of small ports and feed or relay those containers to large, fast linehaul container vessels at major load center ports.

These vessels in turn bring the cargoes to U.S. ports with the containers being transferred to waiting unit container trains which carry the containers to inland cities or across the country. These trains are capable of carrying containers in a double stack configuration and reach over a mile in length and move between ports of unloading and destination cities on schedules dedicated to the schedule of the linehaul container ships.

Once the containers are unloaded at destination, the containers are reloaded with U.S. exports of merchandise or agricultural products and moved within the same system to overseas markets.

Since the movement of export-import traffic is rarely balanced in any given land traffic corridor, domestic U.S. cargoes also move on these same trains to provide the necessary balance. It is truly a closed loop system. When well managed, this logistical system generates cost efficiencies and service levels unimagined just a few years ago.

However, the system is demanding and its appetite for cargo is immense. It is also relatively inflexible, due to scheduling demands. A minor dislocation in this system is disruptive. A major dislocation in the system has the potential for chaos. It is for these reasons that it is critically important that in carrying out its enforcement and facilitation responsibilities, the U.S. Customs Service recognize and be sensitive to the characteristics of today's international surface transportation system.

In my filed testimony, I have cited only examples where this unfortunately has not always been the case. The keys to ensuring that such potentially chaotic situations do not recur, are, I believe, two, attitude and communication. By attitude, I mean a recognition that the private sector transportation companies, the cargo interests, the public ports and the Federal Government, as represented in this instance by the U.S. Customs Service, are effectively in a partnership that makes the system work.

By communication, I mean an ongoing dialog between all the partners to gain a better understanding of each others' concerns and objectives so these can be addressed in a manner that permits the maximizing of the potential benefits of the transportation system.

An orderly progression of automated commercial information systems, an objective allocation of resources to work load, prompt elimination of differences in application of Customs procedures among ports where found to exist, and the anticipating of the demands of future cargo growth are essential to the process.

From a seaport viewpoint, there are a number of ongoing issues involved in the U.S. Customs Service which I would like to briefly summarize. Although the order of priority and the degree of concern will undoubtedly vary among the individual ports, I believe these key issues are common to all U.S. seaports.

First, unilateral actions by the U.S. Customs Service implementing requirements or procedures that have the potential for severe disruption of the international transportation system without advance discussion with the transportation community to assess the potential negative impact or seek alternative, less disruptive solutions.

Second, the assumption by the U.S. Customs Service management that automation of the entry process was a substitute for maintaining adequate staffing levels.

Third, implementation of the components of the automated commercial system in an erratic manner and pressure placed on U.S. ports to automate their local systems without the knowledge of realistic time schedules, design criteria or the local benefits to be derived from the local investment.

Fourth, concerns over application of Customs regulations differently at competitive ports, thereby creating the potential for port shopping by importers for reasons outside of the port's own price service package.

Fifth, inequities created by Custom Service user fees that place another layer of operating costs on port clients without improved service levels in return. The need for allocation of Custom staff, inspectors, import specialists, and supporting staff in a manner reflective of work load to provide the most equitable distribution of staff supply to work load demand.

Last, and perhaps of significant importance, the need to anticipate future staffing requirements consistent with regional trade growth forecasts in order to keep ahead of the growth curve in trade, not to consistently lag behind it which has been our experience in the past.

Thank you, Mr. Chairman.

[The statement of Mr. James J. O'Brien follows:]

TESTIMONY OF THE
PORT OF OAKLAND

BY
JAMES J. O'BRIEN
DEPUTY EXECUTIVE DIRECTOR

BEFORE THE
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON WAYS AND MEANS
SUB-COMMITTEE ON OVERSIGHT

HONORABLE J. J. PICKLE, CHAIRMAN

AUGUST 9, 1988

Mr. Chairman, I am James J. O'Brien, Deputy Executive Director and Maritime Director of the Port of Oakland, California, and I am pleased to be here today representing the Port of Oakland. I also serve as Chairman of the Western States Coalition for Effective U.S. Customs Service and am representing the interests of the Coalition's membership as well.

From a seaport viewpoint, there are a number of ongoing issues involving the U.S. Customs Service and, perhaps to a lesser degree, the activities of the other Federal border crossing inspection agencies. Although the order of priority and the degree of concern will undoubtedly vary among the individual ports, I believe these key issues are common to all United States seaports. From our perspective, they are as follows:

1. Unilateral actions by the U.S. Customs Service implementing requirements or procedures that have the potential for severe disruption of the international transportation system without advance discussion with the transportation/port community to assess the potential negative impact or seek alternative less disruptive solutions.

2. The assumption by Customs Service management that automation of the entry process was a substitute for maintaining adequate staffing levels.

3. Implementation of the components of the Automated Commercial System in an erratic manner and the pressure placed on U.S. ports to automate their local systems without the knowledge of realistic time schedules, design criteria or local benefits to be derived from the local investment.

4. Concerns over application of Customs' regulations differently at competitive ports, thereby creating the potential for "port shopping" by importers for reasons outside of the ports' own "price/service" package.

5. Inequities created by so-called Customs Service "user fees" that place another layer of operating cost on port clients without improved service levels in return.

6. The Customs Service operating practice of pressuring ports to provide office space free, or at below market rental levels, providing computer hardware free of charge, etc., as a requirement of providing port services at satisfactory levels.

7. Allocation of Customs' staff (inspectors, import specialists and support staff) in a manner reflecttive of workload to provide the most equitable distribution of staff supply to workload demand.

8. The need to anticipate future staffing requirements consistent with regional trade growth forecasts in order to keep ahead of the growth curve in trade, not consistently lag behind it.

As specific examples of our past experience concerning the communications gap cited in the above items, we offer the following examples:

1(a) U.S. Customs Country-of-Origin Rules for Textile and Apparel Imports

The U.S. Customs Service issued interim regulations changing rules-of-origin requirements for textile and apparel imports in the Federal Register on August 3, 1984, which interim regulations took effect one month later on September 7, 1984, pending a final rulemaking. These regulations also required all in-bond textile movements to be examined at the port of unloading rather than final destination to avoid the possibility of manipulation during inland transit. However, this procedure raised the immediate specter of chaos at West Coast ports.

The West Coast maritime and port industry reaction to the new U.S. Customs regulations was immediate and vocal. The major in-bond water carriers pointedly noted that it was virtually physically impossible to break into a container moving on a train, particularly under double-stack unit container train operations. The inspection of all textiles would increase congestion and considerably slowdown the movement of textile products. The effect would be to concentrate Customs clearance at all gateway ports to the exclusion of inland ports. Ports such as Oakland, Seattle, Los Angeles and Long Beach would become glutted with cargo awaiting Customs clearance. In addition, resources in terms of manpower and bonded inspection facilities are not adequately available at the West Coast ports of entry to handle the mandated volume of inspections.

The final rule enacted in February, 1985, substantially reduced the requirement for intensive examination of textile and apparel imports at the port of arrival. U.S. Customs carefully monitors textile and apparel imports and initiates intensive examination where the importer has a record or is suspected of fraudulent activities. If the importer has a "clean" record over a period of time, it is far less likely to be subject to examination. In effect, U.S. Customs ultimately responded to the strong industry response made in opposition to the interim regulations.

However, if the U.S. Customs Service had communicated with the shipping lines and ports in an effort to reach a resolution to Customs' concerns in a manner not designed to destroy the advances that had been made in intermodal transportation to that time, the same objective could have been achieved with considerably less consternation.

1(b) U.S. Customs "Red Ball" Security Seals Program

Approximately two years ago, U.S. Customs directed that a "red ball" seal be applied to every import container at the port of arrival as a security measure to avoid possible tampering or theft of cargo. This was a mandatory requirement that impacted all containers moving in-bond for Customs clearance at an inland port.

U.S. Customs inspectors were required to apply the "red ball" seals to the containers at the port of arrival prior to inbond inland transportation. This was a time consuming task that became of great concern to the shipping lines, ports and other related maritime interests. U.S. Customs inspectors were overwhelmed with the sheer volume of import containers to be inspected and seals applied. Long delays and congestion inevitably resulted.

The "red ball" controversy was eventually resolved as shipping lines began using high-security seals put in place at the country of origin which met U.S. Customs requirements for securing of shipments for in-bond movement. We understand almost all shipping lines are now using the high security seals and local U.S. Customs officials spot-check a percentage of the in-bond shipments shown on the vessel manifests to ensure that high security seals are being used by the shipping lines.

Industry observers at the time felt that U.S. Customs acted in haste in moving forward with the "red ball" seal requirement without first discussing Customs' concern for security of in-bond shipments. Had there been sufficient advance communication between Customs and the shipping lines, the security issue could have been resolved to Customs' satisfaction without the major disruption that occurred with the "red ball" seal requirement.

1(c) U.S. Customs Centralized Examination Stations

In July, 1986, U.S. Customs San Francisco Director informed the Port that Customs would require the establishment of a single inspection location to handle all Customs examinations that had previously been taking place at each Port of Oakland Marine Terminal and Container Freight Station.

U.S. Customs stated they were looking to the Port to provide the inspection facility. A very major concern was that if the Port was responsible for establishing a single CES, could it be financially self-sustaining at competitive rates with competing Ports where there were multiple CES stations, such as in the Southern California area. U.S. Customs said that was not an issue of their concern and perhaps the Port of Oakland should subsidize the operation to maintain competitive rates.

The U.S. Customs Directive officially mandating the establishment of Centralized Examination Stations was issued January 6, 1987. The Directive from Washington, D.C. was not specific about a single CES requirement in a particular Port area, but the local Customs District continued to press for the Port of Oakland to provide a single CES.

The Port position in concert with the shipping lines, terminal operators and CFS operators was that there be two on-dock CES and two off-dock CES at existing Container Freight Stations so that there would be competitive factors keeping examination fees at reasonable levels.

The pressure continued for a single CES to be developed by the Port regardless of the economic concerns expressed by the Port and the fact that there were multiple CES locations in Southern California and operating at fee levels that likely would make the Port of Oakland non-competitive if the Port had to establish a single CES.

Finally, on May 8, 1987, the Port was informed that a change in policy had taken place and that there would be at least one on-dock CES and one off-dock CES. Further, U.S. Customs would select the CES sites at existing Container Freight Stations and the Port would not be required to establish the CES. That program has worked reasonably well and provides service at competitor rates.

* * * * * *

We cite these examples not for the purpose of revisiting history or reopening old wounds which would clearly be counter-productive, but only for the purpose of demonstrating how important institutional attitudes and advance communications are in what we perceive to be a Federal-local partnership in making the international distribution system work effectively. The key word is "system" and any arbitrary action that causes an aberration in the process has the potential for raising havoc in the "system". All the parties need to recognize that fact.

Since formation of the Coalition in 1985, born out of necessity because of the concerns cited above, we have made various presentations before committees of Congress calling for increased Customs staffing on the Pacific Coast and have met extensively with Customs staff at all levels. Recognizing the lack of available factual data, the Coalition funded, at its own expense, a detailed study of the U.S. Customs Service which has been made available to both the Congress and the Customs Service for their consideration and use.

Regretably, the U.S. Customs Service reacted negatively to the Coalition's efforts and successfully delayed the gathering of necessary factual data for a number of months. The Customs Service management was subsequently critical of the study citing the Coalition's use of "old data". However, I believe the Coalition's undertaking of the study established our credibility and has led to improved communications with the Customs Service at the District, Regional and National levels since that time.

One of the key conclusions reached in the Coalition's study is that the Customs Service needs to have a more methodical approach to allocating its human resources to reflect workload.

Of particular significance are the two charts (I & II) attached to this paper. One shows that, when measuring Customs inspector workload using five alternative criteria, the Pacific Region consistently had the heaviest workloads. The second chart shows the relationship of Customs' revenues collected to operating budget with the Pacific Region having the highest benefit to cost ratio. Since that time, we are pleased to report that staffing in the various Customs Districts within the Pacific Region has increased, which should result in improved clearance time and better facilitation in the movement of cargoes through various ports. On behalf of our membership, we would like to take this opportunity to express our appreciation to the Congress for the support given to our requests and their recognition of the important role of facilitation as U.S. Customs carries out its responsibilities.

With respect to staffing, we offer the following observations. We support the initiatives taken by the Appropriations Committees of the House and Senate for Fiscal Year 1989 in providing for further increased staffing of the Customs Service with a major emphasis on commercial operations. Furthermore, we believe that the existing and proposed additional human resources of the Customs Service can be most cost effectively and efficiently utilized through an improved methodology for resource allocation against workload.

Are there ways in which the use of authorized staffing can be managed more efficiently to improve facilitation? We recognize that one of the difficult balancing acts that the Customs Service must deal with is the emphasis appropriately being placed on drug interdiction and other violations of our Customs laws while also meeting the need for expeditious processing of cargoes and passengers. We believe there is a need to reexamine the allocation of Customs inspectors to insure maximizing productivity. Our Coalition has called for a national model for inspector allocation and the Customs Service has advised us it is under development and can be implemented this calendar year. We strongly support its objective implementation as a means of maximizing cost effectiveness and resource utilization.

In the FY 88 budget, Congress gave authority for a full complement of 16,099 positions to the Customs Service and we understand that the proposed budget provides for the same level of staffing in FY 89. Although we support this continued staffing level along with the additions proposed for FY 89 by the Appropriations Committees, it appears that through attrition, transfers, and the difficulty in filling positions in a timely manner, staffing levels below Congressional budget authority and administration targets result. One of the ways to address this problem without increasing costs would be to make the entire process of filling positions proceed more rapidly. In the area of recruiting, we understand that difficulties in attracting new qualified personnel under the present federal salary structure is a major constraint on reaching authorized staffing levels and our Coalition supports a study of comparable salaries for federal law enforcement personnel to insure that the intent of Congress to achieve authorized staffing levels in the Customs Service is not frustrated. Also, we understand delays have existed in filling inspector positions because of delays in providing training for Customs Service inspectors. It is my understanding that funding had been reduced for the Government Law Enforcement Training Center at Glynco, Georgia, which trains new Customs inspectors and we encourage the restoration of needed training funds so that training of inspector personnel can proceed to make them fully functional within the Service on a schedule to accomplish the Congressional intent.

Another concern of our Coalition is the use, or perhaps more accurately, the "non-use" of Customs user fees to accomplish their alleged purpose of cargo facilitation. Our members face a situation where the Customs Service generates over $3 billion in revenues as a result of our local public investment in facilities at which we provide the Customs Service with free, or below-market rent for office space, and the Customs Service then assesses our clients "user fees", with the funds generated by the "fees" not being made available to facilitate cargo and passenger movement. We believe such a situation is totally inequitable. If "user fees" are to remain, we believe they should be "cost oriented", with cost defined on a fully distributed basis including fair market value for office rental, and then the revenue generated should be used to facilitate cargo and passenger movement.

Of ongoing concern to our Coalition's members is the perception held by many trade interests that there is a lack of uniformity in application of Customs' procedures among Customs Districts and among Customs Regions. It is clear from the survey conducted by Booz, Allen & Hamilton that this perception does exist. We believe that increased automation of the Customs' process can reduce such discrepancies to the extent they may exist and we also understand that the Customs Service is addressing this concern through periodic meetings among the Customs' Regional staffs. However, our Coalition also believes that legislation addressing lack of uniformity, if it continues to persist, is appropriate and we support the goal of seeking to minimize and hopefully eliminate any discrepancies in application among Customs Districts or Regions.

Extensive testimony on this subject, including specific examples, was introduced on the record by a representative of the Port of Portland, Oregon at hearings conducted by the Senate Finance Committee on June 16, 1988, on S. 1926 "A Bill to Expedite Reconciliation of Inconsistent Decisions of Customs Officers Within the Same Customs Region". That testimony reflected the views of all major West Coast ports.

That bill requires the regional Customs Commissioner to resolve inconsistencies within 72 hours of application. There is no question that this is a very short period of time and that the Customs Service is uncomfortable with it. However, Customs is not being asked to make a new classification determination or practice guideline in response to each application. Customs need only compare the two apparently inconsistent activities and select the one which is appropriate, directing the officers responsible for the other to conform with the regional directive. With the availability of overnight delivery of samples to regional or national headquarters or national import specialists, we believe that a short time period is realistic. However, others who see the need to address the problem of lack of uniformity believe that an excessively short time period may force Customs into a position of simply adopting the highest revenue classification. We are certainly prepared to work with all interested parties to arrive at an appropriate time period provided it is as short as realistically possible.

We believe the coming year can be a watershed year for Customs activities at West Coast ports. We are prepared to live with the present and proposed staffing levels subject to our above comments. However, the growth of cargo forecasted at West Coast ports demands, we believe, a fair allocation of human resources, expedited recruitment and training of personnel, and orderly implementation of automation.

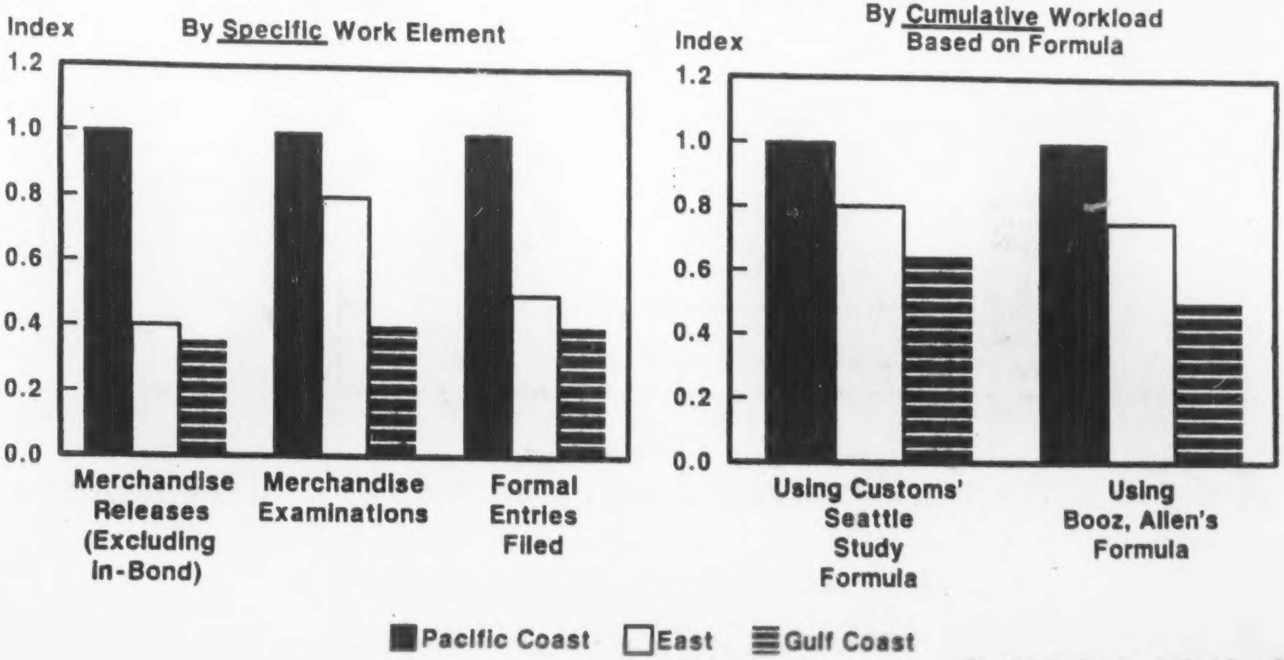
We anticipate that based even on very conservative cargo projections, there will be at least a two-fold increase in the movement of containerized cargoes between now and the year 2000 through West Coast ports. Attached are trade growth charts that show the growth in containerized cargo at West Coast ports (III) which over the past few years has grown at the phenomenal rate of over 13% annually and the impact even conservative growth rate forecasts will have on West Coast ports during the next decade (IV). Long term staffing requirements for U.S. Customs must anticipate this growth curve and keep pace with it, not lag behind as has been the case in the past.

Although staffing levels now appear more adequate to meet immediate needs, and we sense a significantly improved relationship between our membership and the U.S. Customs Service, we also believe a sense of complacency would be a serious mistake. We are confident of continued Congressional support to meet our objectives.

Attachments

(JOB/da)

Comparison of Inspector Workload



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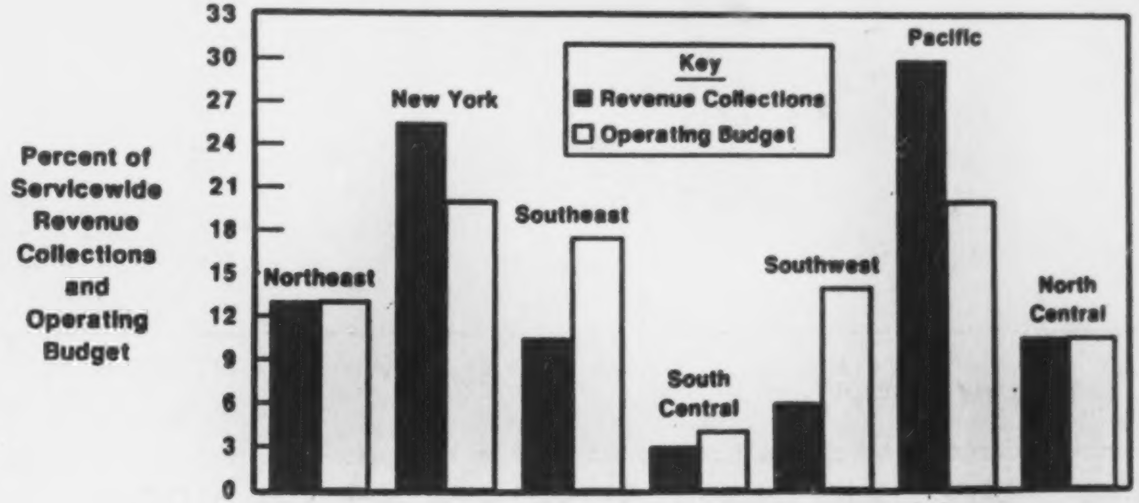
Western States Coalition for Effective U.S. Customs Service

Comparison of Revenue Collections and Operating Budgets by Customs Region



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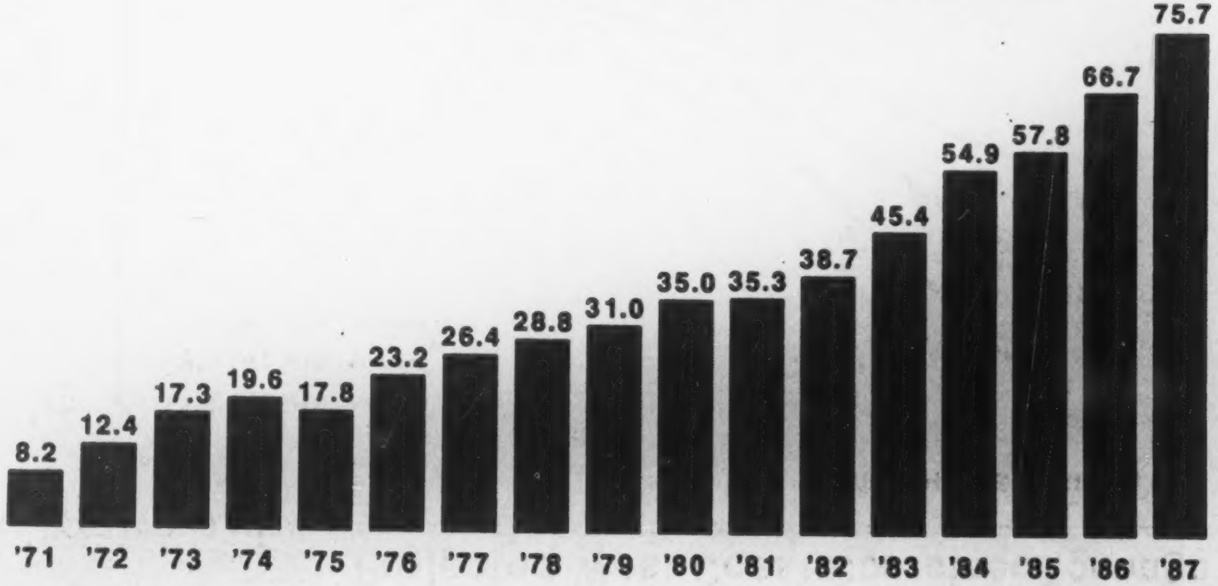
III

PORT OF OAKLAND

West Coast Container Tonnage

(1971-1987) Million Revenue Tons



Source: PMA Statistics

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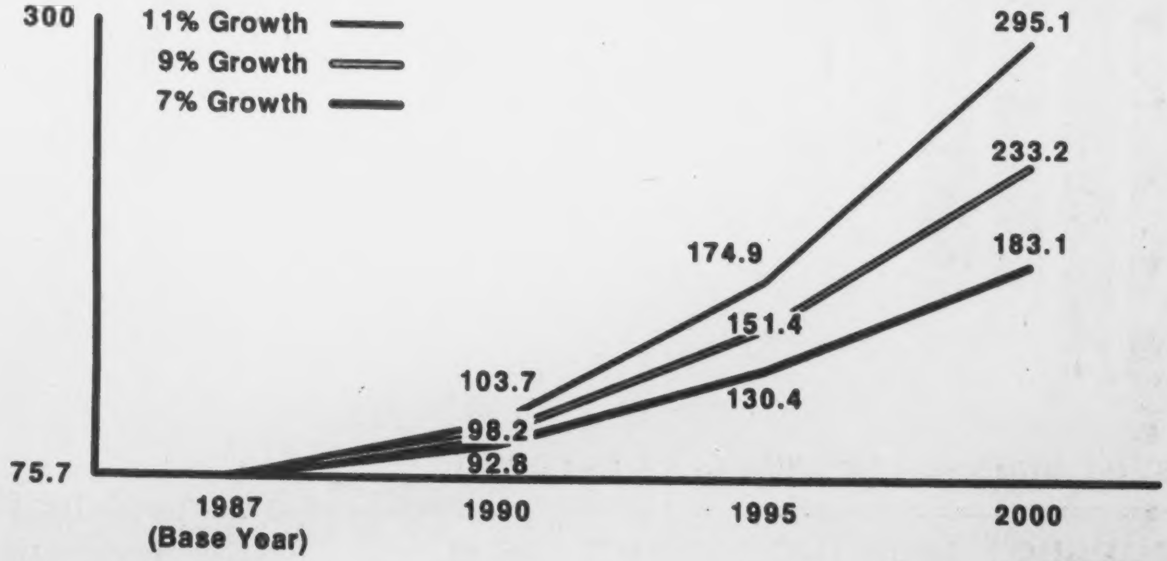
PORT OF OAKLAND

Projected West Coast Container Tonnage

Million Revenue Tons



Base: PMA Statistics

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Chairman PICKLE. Thank you. I will come back to you with some questions.

Our next witness will be Richard Judy, director of aviation of the Miami International Airport. I am also advised that Peter Reavely is in the audience with us today. I want to recognize you for being here and express our thanks for the help you gave our committee when we visited the Miami International Airport and the Port of Miami.

Mr. Judy, proceed.

STATEMENT OF RICHARD H. JUDY, DIRECTOR, MIAMI INTERNATIONAL AIRPORT

Mr. JUDY. I will focus on three of the issues which we cover in our written statement. The first is the 45-minute standard. Passengers are provided 1½ hours to connect from an international flight to another flight.

Chairman PICKLE. Speak into the microphone.

Mr. JUDY. Passengers are provided 1½ hours to connect from an international flight to another flight. Therefore, 45 minutes must be the maximum clearance time for all passengers to clear the Federal inspection process. Average clearance times are irrelevant to the passengers who paid $10 in user fees for a timely inspection process that permits them to catch their connecting flight, but who actually endured a clearance time of an hour and a half.

A maximum 45 minutes clearance time must be legislated as a standard for the Federal inspection process. Computerized cargo clearance systems are now being developed in the United States. There appears to be a legal problem with airport community systems being termed parties of interest by U.S. Customs. This designation is necessary for Customs to transfer non-commercial-cargo data to airport systems that serve the many noncomputerized airlines, brokers, forwarders, and shippers at every major airport.

This is not a technical communication issue. Customs already down loads the full ocean cargo manifests to seaport community systems, including extensive proprietary commercial data. How can such a distinction be drawn between seaport systems and airport systems? Now, the alleged legal problem involves that portion of the air manifest involving the consignee, name and address.

However, airport community systems have no need for consignee information, and they don't ask for it, nor should Customs provide it to anyone. The data needed is only the basic-cargo-identification data, and none of this basic data is proprietary or in any way of any commercial competitive value given the simple solution of not permitting the competitive commercial information to be sent to airport systems, we conclude, therefore, that an ulterior motive is driving the objections of certain airlines and others.

The automated airlines appear to be trying to stop the development of airport community systems to prevent the nonautomated airlines and brokers from gaining access to the same computer capabilities enjoyed by large airlines and brokers.

The computer reservation systems owned by a few major airlines have revolutionized the passenger air transportation industry. They have proven to be the dominant factor in driving out of business the small and medium sized passenger airlines. The big airlines cargo tracking computer systems can impact the nonautomated cargo airlines in the same manner.

Now, it is always the proverbial little guy operating on a smaller profit margin who protects the consumer, since it is the little guy who pushes the well established guys to compete for yours or my patronage. The federal regulatory process must not be manipulated for the competitive gain of the few large automated carriers, as we will pay perpetual costs of reduced competition and the same higher prices that are now emerging in passenger fares.

Miami and New York airports invested $40 million to date in their cargo community systems, and must get this issue resolved by September in order to test the automated air manifest program scheduled for testing by Customs this fall.

The current law must be amended or report language written to make it absolutely clear that airports like seaports are parties of interest. This legislative direction should clearly require that no consignee or other competitive data be sent to any airport system.

This will resolve a legitimate concern of the airlines and others.

The third issue is the air carrier smuggling prevention program. We are trying to have this program, that I discussed earlier, included in the drug bill package under the 1986 Anti-Drug Abuse Act, which requires airlines to take "the highest degree of due diligence to ensure that drugs were not smuggled aboard aircraft or in cargo going to the United States."

In the 2 years since passage of the act, Customs has failed to define the measure necessary to meet "the highest degree of due diligence", obligation of the law. Thus, the airlines have no benchmark against which they can judge their drug-security arrangements or more importantly any indication of how their drug security can be improved.

Now, look at this, it is like taking away all of the speed limit signs and traffic signs and removing speedometers from all cars and allowing the police to determine whether you were speeding or whether the left turn you make back there was legal or alternatively illegal.

The police in each state and county would be the sole arbitrators with no appeal. The airlines have none of these road signs, rules, or judicial process and are helpless and unable to work under legitimate standard to meet or improve their level of security.

The airlines are going to work with us against the drug smuggler and we all want to maintain an economical air transportation system and we must give the airlines the opportunity.

The issue can be summed up in one question: is fighting the war on the smuggling of drugs on aircraft the exclusive responsibility of a few Federal agencies or also the responsibility of the air transportation industry, as we contend? Answer this question first and the issues of the implementation of the proposed industrial program becomes clear.

Thank you, sir.

[The statement of Mr. Richard H. Judy follows:]

TESTIMONY OF
RICHARD H. JUDY
DIRECTOR
MIAMI INTERNATIONAL AIRPORT
HOUSE WAYS AND MEANS COMMITTEE
AUGUST 9TH, 1988

INTRODUCTION

There are few influences that have a greater bearing on the service which airports provide to the international travelling and shipping public than the activities of the U.S. Customs Service. In general we at Miami Airport enjoy good relationships with Customs, both at a local and national level. Despite our healthy differences, we think highly of the Customs management team under Commissioner Von Raab, who have provided strong leadership in the process of bringing the Customs Service up to date, in terms of both computerization and in new management and operational ideas effective in our rapidly changing modern world.

Some specific areas in Customs commercial functions however, still require much improvement. Improvements are needed that affect the overall processing of both arriving international passengers and international cargo; that affect just the processing of arriving international passengers; and that affect just the processing of arriving international cargo.

Miami International Airport is number two in the U.S., in the volume of international passengers and international cargo. During the next twelve months Customs inspectors at Miami will handle more than five million arriving international passengers, at flow rates of up to 20,000 arrivals a day. Our Customs inspectors also will handle more than 600,000 tons of international cargo, at flow rates of up to 3,000 tons a day. During the ten-year period 1980 to 1990 we will have spent $100 Million on Federal Inspection facilities, which now cost us $10 Million a year in operation and maintenance. Our international passenger volumes are increasing at 10 percent compounded each year; and our international cargo volumes are increasing at 15 percent compounded each year. So we speak from experience. Our experience emminently qualifies us to speak for the international passenger community and the international air cargo industry.

IMPROVEMENTS FOR BOTH PASSENGERS AND CARGO

Inspection Techniques

Now that all the passengers arriving from abroad and the cargo shippers are paying User Fees, there remains no excuse for less than a high level of service from Customs. But achieving a good level of service for all passengers and international cargo requires more than just hiring more staff; although today more staff are needed at many U.S. airports, including our own. Adding staff is an effective method for improving the service level offered to the passenger and the shipper only so long as the pattern of international arriving flights at an airport is relatively constant. Unfortunately, traffic peaking is normal in international air transportation, for a range of good commercial reasons too lengthly to describe here. It is not acceptable that the passengers and cargo arriving during these traffic peaks, who have paid their user fees just like all the rest, should endure any lower level of service. The only way to maintain high service levels for passengers and cargo arriving during peak periods is to improve the efficiency of the whole inspection process. As you all know, in this respect we in the United States lag far behind every comparable and competitive western nation. The improvement in the efficiency of U.S. Customs inspection techniques for both arriving international passengers and cargo during peak arrival periods should be "Job 1".

We often hear the opinion from Customs officials that the peaking of arrivals will be an insoluble problem, so long as the airlines do not shift their schedules. This view holds absolutely no merit, as first, it implies that the availability of U.S. Customs manpower should determine the scheduling decisions of the world's airlines; which is a clear example of placing the cart before the horse. Secondly, this view also assumes that the present Customs inspection techniques are a *given constant, and cannot be changed or improved*, to become more efficient. A glance at the Customs procedures in use at any major European airport would question this view.

The airports and the airlines are partly to blame for the lack of progress towards more efficient Customs inspection techniques in the U.S., because over the years we have come into hearings such as these, and asked for improvements in the tangible resources, such as the numbers of Customs inspectors; rather than for intangible improvements, such as more modern inspection techniques. I think we have feared that in the wash between Congress and the Civil Service the tangible improvements had a rather better chance of staying in the system, than did the intangible improvements. Our airport and airline industry therefore unfortunately helped to legitimize the current inspection techniques, when we should have been trying to bring some of these monuments of inefficiency into the modern world.

Specifically, we now need to adopt a modern "High-Risk/Low-Risk" passenger inspection process, forcing the first line Customs supervisors to recognize the "low-risk" concept, and the expedited processing built into the program. We need to adopt such inspection techniques now--not in a few years time. We at Miami are now working very closely with Customs on some very good ideas on "high-risk/low-risk" inspection procedures, which Miami Customs themselves developed, and which are efficiently handling almost 20,000 international arrivals a day, at flow rates of 40 passengers a minute. The facilitation aspects of the new procedures therefore are excellent. You will be pleased to know that the seizures of contraband are also excellent; so, using modern methods, good enforcement can go hand-in-hand with good facilitation.

In the future, Government inspection formalities will play an important part in determining economic competitiveness, particularly in the international cargo industry. As you all know, inventories are being reduced worldwide; "just-in-time" deliveries have become normal around the world; and major international corporations are increasingly performing compotent production and final distribution on a worldwide basis. In today's international trading environment Customs must become an integral part of the America's International business community.

User Fees

We are anxiously waiting to learn of the proposed changes to the Customs User Fee legislation. Our preliminary understanding is that the intent is to bring the Customs User Fee more in line with the Immigration and Naturalization Service User Fee, from the perspective of their treatment within the governmental accounting system. If our preliminary information is correct we would support such an initiative, since the safeguards against budgetary abuse applying to the Immigration User Fee are even more appropriate than those presently applying to the Customs User Fee. From the outset, airports have supported the concept that passengers and shippers should pay for the services they directly receive from the Government inspection agencies. Now that User Fees are being collected, our concerns shift to the correct allocation of those fees for the benefit of those who paid them, and Congress clearly should require detailed annual accounting from Customs on this "cost-benefit" basis.

We would all be better able to protect the interests of those that pay the User Fees, were the accounts submitted by the Customs Service during the annual budgetary process more specific as regards the sources of revenue and the cost centers of their allocation. For example, User Fee revenues and expenditures should be broken out by user type and transportation mode. Cost centers should be well defined to ensure that inappropriate Customs functions are not being funded by User Fees.

Institutional Inefficiencies

As a very first step towards improving the level of service to the arriving international passenger and the international cargo shipper, Customs needs to recognize and modify some of the present Civil Service practices that seem to become imbedded in any large bureaucracy. Let me give you an example of Customs staffing requirements, from our own experience, to illustrate the point.

Staffing Requirements

The three big international airports at New York Kennedy, Miami International and Los Angeles, all suffer constant staff turnover, but lets take advantage of this and plan for it. Since these airports are excellent training grounds for Customs, they should be staffed so that each airport has a 20 percent staff overage, to cover the constant staff rotation on posting, hiring, training, staff assignments, etc. This way we will always have our full complement of trained, qualified, inspectors actually available each day, while still serving as training grounds for other airports. On this subject, we also need to look at the way F.I.S. staff are assigned to major airports, based upon international passenger and cargo volume. It is now time to refine this measure of workload, by factoring in the difficulty of the task at airports such as Miami, which tend to have larger volumes of "high risk" passengers and cargo, requiring a much higher level of inspection alertness than some other airports.

The full complement of truly operational people also need to be available to the airport at the times of the peak arrival hours of the passenger and cargo aircraft at the major international airports. We are discussing the U.S. Customs SERVICE not a nine-to-five office job, with all other work on overtime. International airline schedules worldwide are very complex, as a result of operating curfews, aircraft utilization factors, and connecting patterns. No single airport in the world can demand of its airlines that its passenger flows be smoothed out between nine and five, to suit some antiquated civil service rules. In Miami's case we have three large international arrival peaks; around 6:00 in the morning from South America; around noon from Central America and the Caribbean, and around 4:00 in the afternoon from Europe. Fortunately the noon peak and the afternoon peak fit into the same 8-hour shift from 11:00 to 7:00 p.m., which covers the majority of our traffic. We want those peaks to get even bigger, since 50 percent of our international passenger are connecting, either to other international flights, or to the domestic airlines. The wide range of conveniently scheduled connections provides a high service level to our passengers.

PASSENGER CLEARANCE

The Forty-Five Minute Standard

Of all the things concerning a passenger arriving from abroad that defines the level of service received, the amount of time that it takes for that individual passenger to get from his aircraft to being out of the airport is likely to be the most important. It makes sense, therefore, to judge the level of performance and service of our Federal Inspection Services by the amount of time it takes a passenger to get from the aircraft out of the airport, and to monitor Federal Inspection performance and service by means of a clearance time standard. The practical difficulties involved in measuring the elapsed time, from when the aircraft reaches the terminal, to when the passenger reaches the exit door of the terminal, forces us at Miami to concentrate on the elapsed time between when the aircraft checks "blocks-on" and when the passenger reaches the "meeters and greeters" lobby.

Based on the internationally accepted standard of one and a half hours for international connections, and considering the huge costs associated with having an aircraft lie idle, while connecting passengers are delayed by government inspection formalities, forty-five minutes must be the maximum acceptable clearance time for arriving international passengers. That forty-five minutes covers all of the inspection process, including Immigration, Customs, Agriculture--everything. This standard of service should apply to every normal, law-abiding passenger, on any individual flight, arriving on any day of the year, at any U.S. airport. It should not be an average. An "average" suggests that 50 percent of passengers took less then that number, and 50 percent took more. Too often we hear our own average clearance time figures at Miami quoted against us, in defense of performance shortcomings; when such an average is irrelevant to the specific passenger who paid five dollars for Immigration processing, and another five dollars for Customs processing, but who actually endured an hour, or an hour and a half long clearance time. As connecting check-in functions for international flights become more time consuming every year, and bite further into the one and a half hour connecting-time window, the importance of meeting and beating this forty-five minute clearance time standard will increase. More than 99 percent of all passengers are normal, law-abiding travellers, with all of the correct documentation. It is therefore time that Congress take action to cause this to become a national clearance time standard, upon which Congress will annually receive reports.

Inter-Agency Cooperation

We should point out again that the forty-five minute standard applies to all of the functions involved in the clearance of international arriving passengers. We tend to use the generic term "Customs" when we actually mean Immigration, Agriculture, Public Health, and airline baggage delivery, in addition to actual Customs processing. Just as we often use the word "customs" generically, our passengers tend to blame the Customs Service for the failings of the other agencies, and frequently for the failings of the airlines. Both for fairness, and to ensure that we recognize the real problems and then implement real solutions, we need to develop a process for recording and reviewing the performance of each part of the overall inspection process. Unfortunately, from a budgetary perspective, the various agencies involved all fall under different branches of government, so appropriate and effective oversight by Congress has become more difficult. We have all become the unlucky proof of the saying "divide and conquer".

We request that from time to time a joint hearing should be held, before an *ad hoc* subcommittee made up of members from all of the committees with some area of jurisdiction over the complete Federal inspection process. We recognize that calling for more hearings might make us unpopular in Washington, but there must be a single forum, at least once a year, to review the entire inspection process, if we are ever to manage these all of these functions efficiently, and to meet the needs of our travelling public and the air cargo industry of our nation.

An important issue concerning passenger inspection, that is just beginning to emerge, involves automated passport and visa readers. The U.S. Customs Service has determined that it needs to receive advanced passenger manifest information, including the full name, place and date of birth, and other particulars of the person travelling, for input into its new computer information system used for passenger inspection. The Immigration Service already wants this data for its own computer system, which is why it is working with all of the other nations to introduce computer-readable passports and visas. While we have serious concerns over the use of some of this detailed personal information, especially when computers make information recall so easy and so open to abuse, our position is that the requirements for the supply of this information should be tied into the use of automated passport and visa readers. Both the Customs and Immigration computers will have need of the same data generated by the same automated passport and visa readers. It is vitally important to the facilitation of passenger clearance that the data required by Customs and the data required by Immigration be collected by one "read" of the relevant document. Surely, with today's technology, the same data can be fed simultaneously into two data-banks. This will require close inter-agency cooperation, or else we will all see two sets of passport readers, and two sets of visa readers, at every international airport in the nation. At a policy level, Congress will also have to give the Federal agencies some guidance, since our Constitution does not require any U.S. Citizen to carry a passport to leave the country at any time. This situation is very important to the large and rapidly developing cruise-line industries on both the west coast and the east coast, and to the development of U.S. tourism in the Caribbean and Latin America; and no U.S. Citizen returning to the U.S. from any of these journeys is today required to carry a full passport to come back into the U.S.

CARGO CLEARANCE

Centralized Inspection

Of the many Customs-related facilitation issues, the centralized inspection of cargo has probably created the most clear divide within the cargo industry, largely due to poor information, and to some mistakes made in the implementation of the Centralized Examination Station (CES), at New York Kennedy. Because of this experience some now feel that CES's represent a decrease in the level of service provided by Customs, rather than the increase in service that had been intended. At the heart of the matter lies the trade-off between the faster clearance times permitted by centralized inspection on the one hand, and the small extra cost to the carrier or brokers of having to bring their cargo to a centralized location, on the other hand.

Miami believes that centralized cargo inspection can be implemented in a way that will make everyone happy. Our belief was echoed by the Government Accounting Office in their study of the issue, when they found that at most locations with CES's the local cargo industry was content with the system. We would strongly recommend some important enhancements to the concept. First, it should be understood that there cannot be just one centralized inspection station at a major international airport. At the major international airports there certainly must be more than one CES, which will still provide the airlines, the brokers, and Customs, with the higher level of service and the economies of Customs manpower, while minimizing the cargo handling on the carriers and brokers.

Second, the use of the CES's should be voluntary, not mandatory. We should endeavor to let the market place work, by giving the cargo community the choice between guaranteed faster inspection at a CES, or "Expedited Service Center", with the related small additional handling expense on the one hand; and the less efficient, (and ultimately more costly to Customs and therefore to the User, in User Fees), present methods of Customs inspection, with no additional handling expense, on the other hand. A voluntary CES, or Expedited Service Center, program will calm some of the fears of potentially reduced inspection service arising from centralized inspection. We absolutely support centralized inspection, only so long as the service provided to our cargo community improves by an amount sufficient to offset the small additional costs associated with any double handling of the cargo. Improved service for our cargo industry is in all our interests.

Out of this voluntary program should also emerge a cargo clearance time standard, along the same lines as that for passengers. The international cargo community is paying a User Fee for the commercial services of Customs, just like the international passengers; and since the users have no alternative to paying the fee, the Customs Service should have no alternative to meeting acceptable standards, as determined by commercial needs. We like the idea of the new "Paperless Release" program, for "General Release" cargo, which Commissioner Von Raab is introducing in mid-August. Let us all now work together to expedite the release time of "Intensive Examination" cargo. We already expedite the release of intensive examination cargo for the couriers at the Customs Courier Center at each of our major airports. Let's provide the opportunity of the same level of service for our airlines and our brokers for normal commercial cargo.

"Port Shopping"

A major benefit of a voluntary CES program, coupled to a clearance time standard for international cargo, is that we can begin the long overdue process of eliminating the differences in Customs inspection practices between different airports (and seaports). The decentralized nature of the Customs Service has allowed different Customs Districts to apply very different inspection practices between airports. Custom Brokers come to learn of these differences in treatment, and often go "port shopping", where they select their point of entry for different commodities depending on the inspection reputation and qualifications of the local Customs District at each airport. The gradual introduction of the Automated Brokers Interface, tied into Customs national computerized cargo inspection process, will hopefully gradually reduce this practice; but, since, in a community such as ours, the local cargo industry is a major source of employment and income, we face huge economic ramifications arising from the differences in Customs inspection practices between airports. This is an intolerable circumstance, that should be high on our list of priorities for resolution. By adopting a clearance time standard, the differences in the intensive inspection practices between Customs Districts also will begin to disappear.

Cargo Automation

Over the last four years, both Miami and New York airports have been developing the first automated cargo clearance systems in the United States. The Miami International Cargo System (MICS) and Fast-Flow in New York, are computer systems that when fully operational hold the promise of removing 90 percent of the paperwork from the cargo clearance process. They are the air cargo equivalents to the banking computer systems that have automated the entire business of banking. Generically termed "community systems" these automated cargo clearance computer systems are intended to electronically link each part of the cargo clearance process, including the airlines, Brokers and Forwarders, U.S. Customs and the Department of Agriculture. We have now however, become aware that there may be some technical, commercial, or legal problems with airport community systems being termed "parties of interest" by U.S. Customs. Such "party of interest" designation is necessary for Customs to down-load to the airport community systems some of the basic manifest data needed for community systems to function. Customs presently already does this for Seaport Cargo Community Systems, in order that they can function efficiently on behalf of their whole cargo community.

For example, at Miami the airlines that do not have computerized cargo tracking systems (who represent more than 75 percent of our international cargo) will use the Miami Community System (MICS) to send their cargo manifest data up to the Customs computer system. Our community system also will notify the brokers of the arrival of that cargo, so that they can begin preparing their Customs "entries" for the release of that cargo. The airlines that have computerized cargo tracking systems (and who represent less than 25 percent of our cargo primarily the major U.S. airlines) will send their cargo manifest data directly to the Customs computer. We request that the basic manifest data of the automated airlines, shown on Exhibit 1, which is the minimum technical information necessary to identify a shipment, be down-loaded by Customs to the community systems, for the cargo of the automated airlines arriving at that airport. The community system can then create the basic record files for all of the cargo moving through the airport, notify the brokers, and the brokers can begin their Customs entries. Under the new "paperless release" procedure, the broker can then use the community systems to print release notes to the airline for cargo pick-up. The national Customs system and the airport community systems must stay in synchronization, for all of the cargo arriving at that airport, from both the automated and non-automated airlines, on behalf of all of the automated and non-automated brokers and forwarders.

This is not a technical issue, as Customs already down-loads full manifest information (including much proprietary commercial information) to Seaport computer systems, since Seaport community systems are deemed to be "parties of interest". We continue to be perplexed as to how a distinction can be drawn between existing seaport community systems and the first two airport community systems at Miami and New York. We are led to believe that there may be a legal issue involving the proprietary commercial nature of some of the air cargo manifest information, such as the consignee name and address. We understand the automated airlines' concerns that since some of the seaport receive the full sea manifest information, including consignee name, and then make this consignee information available for marketing purposes, that the airports might do the same, and then damage the airlines commercial competitiveness. The airlines may rest assured that we agree totally with their position. Airport community systems have no need of consignee information and they should not be provided with it, nor should they ask for it. The basic data which the airport community systems require is only the airline flight number, date, Air Waybill number, number of pieces, weight and brief commodity description as shown in Exhibit 1. This is just the basic cargo identification data for Customs and the broker (who has been assigned by the airline). None of that basic data can be considered to be of any proprietary or commercial significance.

We would not like to think that the major U.S. airlines are actually using the "commercially confidential consignee name" factor as a mask, to cover their real objective, which some feel is to kill any airport community system. The result of this would be the major U.S. airlines using their own automated cargo tracking computer systems, linked only to their own cargo agents, to use their competitive leverage to drive other airlines out of the international cargo business. They could then use their cargo computer systems, as they use their passenger Computer Reservation Systems (CRS's), with all of the resulting anti-competitive and oligopolistic practices. In this case, we are dealing with our nation's international trade, which is far too important to be involved in airline anti-competitive games.

Both Miami and New York must get the issue resolved by September, in order to test the whole automated Air Manifest

System (AMS) program with Customs scheduled for this fall. The current law (regulations?) must be amended in this session of Congress, to make airport cargo community systems "parties of interest", like Seaports. This legislative direction should require that no competitive commercial data (such as consignee name) be sent to an airport system, but only the data shown in Exhibit 1. This is vital to the economy of our nation, and to the continued competitiveness of large and small airlines, automated and non-automated airlines, and large and small, automated and non-automated, brokers and forwarders throughout the U.S.

Mr. Chairman, we need your leadership, and we hope this Committee will give suitable direction to the airlines, and to the Office of Regulations and Rulings, to begin a pilot-program of down-loading basic manifest data with Miami and New York airports within the next 60 days.

The McKinsey Report

In a farsighted decision, Commissioner Von Raab recently commissioned a study into the future role of automation in U.S. international trade. The McKinsey report indicated that in the future, U.S. Customs would be dealing solely and directly with the importers and the exporters worldwide, in an entirely Electronic Data Interchange (EDI) environment. The study concluded that in the future EDI environment the air and sea carriers would be irrelevant, the brokers and forwarders would be irrelevant, and the airports and seaports would be irrelevant to Customs processing of cargo entries. So would the community cargo systems. I would suggest that McKinsey was thinking of the future only in terms of the year 2000, and only in terms of the larger companies in the world. While this may indeed be an accurate interpretation of forthcoming events in that scenario, the competitive and decentralized nature of today's real world environment stands in contrast. Today's real-world international trade environment must be dealt with for at least the next five years, even in the most sophisticated western nations; and for at least the next ten years in many of the developing nations with whom the U.S. trades, to our mutual benefit.

In the case of Miami International Airport, we are served by more than 100 airlines, handling cargo from 170 countries, via 300 freight forwarders and customs brokers. Only about 20 percent of our cargo agents, and about 10 percent of our cargo airlines are automated. Not one of the automated systems of the automated airlines or of the automated brokers can communicate with each other. That still leaves us with 600,000 tons of international cargo today, which will grow to one million tons of cargo in 1990, to be cleared by Customs under the old system, if we at the airport do not help to automate the complete process, for our whole international cargo community. A community cargo clearance system linking the entire cargo industry at a major airport or seaport is the only way that U.S. Customs will achieve automated paperless tracking and release of the majority of cargo passing through the major U.S. airports and seaports over the next five years. We would be pleased to demonstrate our community system to McKinsey for their technical review and constructive comments.

NARCOTICS INTERDICTION

Air Carrier Smuggling Prevention Program

Whenever the commercial aspects of Customs responsibilities are discussed, the issue of drug interdiction is invariably mentioned. We like to separate the two issues, as we firmly believe that the facilitation aspect of passenger and cargo clearance, and the enforcement aspect of drug interdiction efforts, are not in inherent conflict, as the Customs Service is so fond of stating. We would like to indicate some of the basic inconsistencies with the position the Customs Service has chosen to take.

The air transportation industry has developed a proposal entitled the Air Carrier Smuggling Prevention Program. The program has two principal components. First, the program requires the Customs Service to approve, as a first line of defense, pre-departure inspection standards for both air cargo and aircraft, at each foreign airport with service to the United States. These inspection standards are to take account of the ambient security conditions at these foreign airports. Second, the proposal requires the Customs Service to assist in the development of, and to approve, a program of voluntary-to-the-airline second-line inspection of both their cargo and their aircraft, on arrival in the United States. This voluntary second inspection process, in the U.S., would be performed by specially trained security airline personnel, approved agents of the Customs Service, or by Customs personnel, as determined entirely by the Customs Service. Customs would retain every element of control over drug interdiction efforts that they enjoy today. This proposal would increase the resources available for the inspection of cargo, and require Customs to clearly establish what is expected of airlines in their efforts to stop the smuggling of drugs on board their aircraft, and in the cargo which they carry. Seizing aircraft and fining airlines millions of dollars, for factors often out of their control, might make good headlines; but let us all work together to prevent drugs from entering our country in air cargo, by just making the risk too great that the drugs will be seized. We can achieve this together, keep our airlines in business, and also help the economies of the small friendly nations in the Caribbean and Latin America, who are so dependent on their air transport links with the U.S.

Under the 1986 Anti Drug Abuse Act airlines were required to take "the highest degree of due diligence", as determined by the Customs Service, to ensure that drugs were not smuggled aboard aircraft, or in cargo destined for the United States. In the two years since the passage of the Act, Customs has failed to define the measures necessary to come under "the highest degree of due diligence" obligation of the law. Airlines consequently have no benchmark against which they can judge their security arrangements, or more importantly, any indication of how their security can be improved. There is no scale. It is rather like taking away all of the speed limit signs and other traffic signs, and removing the speedometers from all cars, and then allowing the police to determine whether you were speeding, or whether the left turn you made back there was in fact legal, or illegal. The police in each state and in each county would be the sole arbiters, with no appeal. Today airlines have none of these road signs, rules or judicial process and are, therefore, largely helpless and unable to work with us all to improve the level of security in air transportation. The airlines want to work with us. Let's give them the opportunity.

Customs has drawn up many arguments that are based on creating a vision of airlines with no integrity, and which are willfully failing to do anything to stop the importation of narcotics. They argue that this new program "lets the airlines off the hook". Nothing could further from the truth. The program was specifically designed so that Customs would retain every last bit of the authority they have today, to ensure that the participating airlines are meeting the true "highest degree of due diligence." This proposal will bring the whole aviation industry actively into the effort to stop the use of air transportation for drug smuggling.

In view of the high Customs profile on this issue, Congress should ask Customs:

1. What were the total volumes of international cargo

arriving during calendar year, or fiscal year 1987 at:

a) the nation's airports?
b) the nation's seaports?
c) the nation's land borders?

2. What percentage of each of these volumes was subjected to intensive examination?

3. What was the total volume of drugs seized from each mode of transportation?

At the true heart of this matter is an issue of basic democratic philosophy. The entire issue can be summed up in one question, "Is fighting our nation's war on drugs the sole and exclusive responsibility of a few Government agencies, as in effect Customs contends; or is it the responsibility of us all, as citizens and as an airport and airline industry, as we contend?" Answer this question first, and the many issues of implementation will become much clearer.

BASIC AIRLINE MANIFEST DATA REQUIRED
BY AIRPORT CARGO COMMUNITY SYSTEMS

FULL AIRLINE MANIFEST DATA	BASIC DATA REQUIRED
1. CARRIER NAME	CARRIER NAME
2. FLIGHT NUMBER	FLIGHT NUMBER
3. AIRCRAFT TAIL NUMBER	
4. FLIGHT DATE	FLIGHT DATE
5. PORT OF LADING	
6. PORT OF DISCHARGE	PORT OF DISCHARGE
7. AIRWAYBILL NUMBER	AIRWAYBILL NUMBER
8. NUMBER OF PIECES	NUMBER OF PIECES
9. WEIGHT OF CONSIGNMENT	WEIGHT OF CONSIGNMENT
10. COMMODITY DESCRIPTION	COMMODITY DESCRIPTION
11. CONSIGNEE NAME, IF AVAILABLE	

Chairman PICKLE. Thank you, Mr. Judy.

Now, Mr. Leach, representing the American Association of Port Authorities.

STATEMENT OF RICHARD P. LEACH, PRESIDENT, PORT OF HOUSTON AUTHORITY, AND IMMEDIATE PAST CHAIRMAN, AMERICAN ASSOCIATION OF PORT AUTHORITIES

Mr. LEACH. Thank you, Mr. Chairman.

The American Association of Port Authorities founded in 1912 represents virtually every U.S. public port agency, as well as the major port agencies in Canada, Central and South America, and the Caribbean.

This testimony, however, reflects only the views of the U.S. delegation.

AAPA members are public entities mandated by law to serve public purposes, primarily the facilitation of water borne commerce and the consequent of the generation of local and regional economic growth. Institutionally, public port agencies range from special bistate authorities to entities organized on State, county, municipal or special taxing district boundaries. Port authorities typically are governed by elected or appointed commissions. Individual port authorities range from single marine terminals handling one export commodity with a distinct hinterland to multiterminal load center ports with container, break bulk and bulk cargo terminals serving national markets. Public port authorities serve their trade communities primarily by developing the physical infrastructure needed to conduct trade.

Ports competing vigorously with one another. The timely and efficient processing of import cargo, therefore, is critical to the competitiveness of individual ports, particularly in this era of time sensitive, high value, intermodal cargo. The U.S. Customs Service is the lead Federal agency in clearing these import cargoes. Consequently, the actions, plans, and policies of Customs commercial operations have a direct and immediate impact on the port industry.

In recent years, AAPA has met on a regular basis with top Customs personnel to discuss issues of concern. These meetings have succeeded in producing a channel of communication that has facilitated cooperation and mutually beneficial solutions which had been absent or inadequate in previous years. Although there have been, and continue to be, substantial areas of disagreement, these meetings have greatly improved our relationship and the efforts of the Commissioner, Deputy Commissioner, and other staff should be recognized and commended.

These meetings grew out of a series of actions by the Customs Service that adversely impacted cargo facilitation at ports and were implemented without advice or consultation. These actions included the red ball seal program, changes in inspection procedures related to country of origin determinations for textiles and apparel and major changes in design and direction of the automated commercial system. The problems could have been avoided or mitigated by prior notice.

To improve relations between the Customs Service and public port industry, and to promote enhanced customs commercial operations and cargo to facilitation, AAPA recommends the following initiatives:

First, structured and regular communications between the Customs Service and the public port industry and other members of the trade community. The recently created Advisory Committee on Commercial Operations of the Customs Service should be able to serve this purpose, provided that it is used to promote regular, two-way and frank discussion between the Customs and the trade community on current policies and pending actions.

Second, intensified efforts by the Customs Service to ensure uniformity of inspections, tariff classifications, and other enforcement practices at all ports in the United States. In addition to being sound management practice, uniformity would preclude Customs from becoming a factor in port competition. Importers should not select ports of entry on the basis of the scope and intensity of customs.

Third, in light of rapidly increasing trade flows, Customs should develop and implement a more objective and reliable method for determining and anticipating demand for Customs personnel to inspect and clear cargo at our ports. Adequate staffing at all ports is another essential element ensuring that Customs does not distort competition between ports.

Fourth, the customs user fee should be used to cover all costs related to the commercial operations of the Customs Service, including facilities and services presently provided without cost by our member ports. Threats of inferior service should not be the basis for providing Customs with a facility necessary to the proper performance of its statutory mission.

Fifth, the automated commercial system must be designed and operated in an orderly consistent manner. More than 4 years ago, Customs solicited public port industry participating in ACS with the ultimatum of automate or perish. Since that time, ports have taken a leadership role in industry participation, but much more could have been accomplished in a shorter time had Customs been more consistent and open about the design of the system. Customs has been guilty of numerous changes in policy and direction. Ports consequently have been forced to develop their local systems without the benefit of consistent direction from Customs.

Moreover, many ports have postponed becoming involved in ACS to avoid wasted time, effort, and money. It would appear, even now, that the role of the ports may not yet be properly identified. Much remains to be resolved and AAPA hopes that through the Customs Electronic Systems Advisory Committee, proper solutions will be forthcoming in the near future.

AAPA appreciates the interest this subcommittee has demonstrated in bringing these issues into the open as well as its commitment to finding solutions to existing problems, and we offer our assistance in the continuing effort to determine how to improve and maintain the quality of service provided by the U.S. Customs Service.

Thank you, Mr. Chairman.

[The statement of Mr. Richard P. Leach follows:]

STATEMENT OF RICHARD P. LEACH, PRESIDENT, PORT OF HOUSTON AUTHORITY, ON BEHALF OF THE AMERICAN ASSOCIATION OF PORT AUTHORITIES

INTRODUCTION

Mr. Chairman, I am Richard P. Leach, President of the Port of Houston Authority and Immediate Past Chairman of the American Association of Port Authorities (AAPA). It is a pleasure to be here today testifying before this committee, and AAPA thanks you for this opportunity.

General Industry Background

The American Association of Port Authorities, founded in 1912, represents virtually every U.S. public port agency, as well as the major port agencies in Canada, Central and South America and the Caribbean. This testimony, however, reflects only the views of the United States delegation of AAPA.

AAPA members are public entities mandated by law to serve public purposes, primarily the facilitation of waterborne commerce and the consequent generation of local and regional economic growth. Institutionally, public port authorities range from special bi-state authorities to entities organized on state, county, municipal or special taxing district boundaries. Port authorities typically are governed by elected or appointed Boards or Commissions, which are accountable to the public for the successful operation of the port's facilities and fulfillment of the port's charter.

Individual port authorities range from simple marine terminals handling a single export commodity serving a regional "hinterland" to multi-terminal load center ports with container, breakbulk and bulk cargo terminals serving national markets via inland rail, truck and plane transportation systems.

In many cases, the port authority's mission to facilitate commerce is broadened to include developing distribution and manufacturing facilities, Foreign Trade Zones, industrial parks, shipyards, and other marine and non-marine dependent projects to stimulate economic activity. In all cases, public port authorities serve their trade communities by developing the physical infrastructure needed to conduct trade, including marine terminals and channel construction. (Under the Water Resources Development Act of 1986/P.L. 99-662, port authorities share the cost of developing new channels with the federal government.)

Ports compete vigorously with one another to attract cargo destined for inland markets because of the economic impact these cargoes will have locally. The timely and efficient processing of import cargo, therefore, is critical to the competitiveness of each individual port, particularly in this era of time-sensitive, high-value intermodal cargo. The U.S. Customs Service is the lead federal agency in clearing these import cargoes and consequently is critically involved in the successful operations of our member ports. Therefore, the actions, plans and policies of Customs' Commercial Operations have a direct and immediate impact on the port industry, which reaches, on occasion, to affect the competitiveness of individual ports with one another.

Industry Relations With Customs

In recent years, AAPA has met on a regular basis with top Customs personnel to discuss issues of concern. These meetings have succeeded in producing a channel of communication that has facilitated cooperation and mutually beneficial solutions, which had been absent or inadequate in previous years. Although there have been, and continue to be, substantive disagreements on the appropriate nature and design of several Customs initiatives, these meetings have greatly improved our relationship, and the efforts of Commissioner William von Raab, Deputy

Commissioner Michael Lane and top staff should be recognized and commended.

These meetings grew out of a series of actions by the Customs Service, via new regulations and internal policy directives that significantly affected, often with serious negative impact, cargo facilitation at ports, but about which port authorities were neither adequately advised nor consulted. These actions included the "Red Ball Seal" program, changes to inspection procedures related to country-of-origin determinations for textiles and apparel, as well as major changes in design and direction of the Automated Commercial System. The problems resulting from these actions later were mitigated by communication between Customs and the affected parties. However, they could have been avoided.

AAPA recognizes and supports the efforts of the U.S. Customs Service to modernize its procedures, methods and operations in response to the tremendous growth in trade volumes. The recently completed report on Customs operations by McKinsey and Company is a useful analysis of Commercial Operations' future challenges, and AAPA endorses this attempt at identifying and developing concepts that will serve to facilitate and expedite commerce.

AAPA also supports the recent creation of the "Advisory Committee on Commercial Operations of the Customs Service" within the Treasury Department. A need certainly exists within the trade community to evaluate, together and in a national forum, the effects and impacts of Customs policies on trade, and to advise the Congress in an orderly fashion. This committee should serve that purpose. Structured and regularly scheduled meetings with two-way, open and frank discussions of current policies and pending actions (to the extent possible) between Customs and the port industry, as well as other affected industries, are necessary for promoting cooperation and understanding, and, in fact, our mutual interests in facilitating the flow of international commerce.

GENERAL COMMERCIAL OPERATIONS CONCERNS

Uniformity

Because ports compete directly and intensely with one another for cargo, uniformity of inspections, tariff classifications and other enforcement practices between ports in different Customs districts and regions is absolutely necessary to prevent the practice of "port-shopping." This practice involves importers selecting ports of entry for their cargo based upon the scope and intensity of Customs enforcement. AAPA has long held that Customs laws and practices should be applied uniformly, and that their implementation should not become a competitive factor between ports.

Unfortunately, differences in Customs procedures currently do play a role in the choice of port. When Customs Headquarters issues an enforcement directive to its regional and district directors, there is often wide discretion in its interpretation. For example, when Customs District Directors along a particular coast are instructed to thoroughly inspect all entries from Country X, all containers entering through Port A are completely devanned, at a cost of over $500 per container (charged to the cargo interest) whereas in Port B, only the entry documentation is thoroughly inspected, resulting in significantly lower entry costs. The result is that all cargo from Country X on the next ship is discharged at Port B to avoid the enforcement practices in Port A. Employment and economic benefits at Port A are lost and the conduct of commerce is unfairly skewed by this lack of uniformity.

AAPA does not suggest that Customs either not enforce or fail to correctly appraise, classify or value import commodities. However, Customs should treat the same products the same way regardless of which port is used for importing. The Customs Service should intensify its efforts to prevent this problem. It should be noted here that the inspection operations of other federal agencies, including the Department of Agriculture and the Food and Drug Administration also have the potential to affect the competitive dynamics between ports.

It has been suggested that Customs' ACS "selectivity" module will help to alleviate this problem by indicating to all districts which cargoes are likely targets for examination. While recognizing that an inspector's discretion is an essential element in detecting fraud, AAPA believes that Customs should implement an audit system to identify and alleviate significant differences in levels of enforcement. Lack of uniformity must not be permitted to be a significant factor in port-to-port competition. The Constitution of the United States, in fact, prohibits it: "No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another" (Article I, Section 9, Clause 6).

Method of Staff Allocation

In recent years, waterborne trade has increased tremendously in both volume and value. This growth has generated an acute demand for increased staffing of U.S. Customs Service personnel to inspect and clear cargo at our ports. However, Customs Service management has been hesitant to acknowledge this need and to implement these staffing increases, arguing that the implementation of the Automated Commercial System would increase productivity such that additional inspectors would not be necessary. As stated above, this has not been the case. Instead, Congress has taken the lead in determining the demand for Customs services, in some cases allocating personnel. Despite Congressional efforts, delays in filling authorized positions also have strained the ability of Customs to fulfill its role.

It is obvious to AAPA that Customs Headquarters must develop and utilize a more accurate, reliable method for determining and anticipating demand for Customs personnel. The port industry has called for a national model for inspector and import specialist allocations. Apparently, such a model is being developed.

AAPA fully supports this project. Staffing on a national basis should be determined according to objective criteria. Although such procedures have not been utilized in the past, we believe they are necessary to ensure that Customs' role in cargo facilitation does not distort competition between ports. Customs has acknowledged that allocation has been at times arbitrary and subject to political pressure. While AAPA appreciates the reality of this situation, political concerns should not be a paramount factor in these decisions.

AAPA looks forward to a public review and the successful implementation of Customs' allocation models. We also support efforts to streamline hiring and training procedures to ensure full staffing levels.

Commercial Operations Funding

AAPA recognizes and appreciates the increased resources that were approved for the Commercial Operations of the Customs Service for the current fiscal year, as well as the additional increase proposed for next year. Due to the intensified emphasis on enforcement and drug interdiction in recent years, less widespread attention has been given to the expeditious processing of cargoes. Despite the lower visibility of this issue, dramatically increased cargo volumes and enforcement of new and more complex trade laws and regulations are causing a greater demand on Customs personnel at our nation's ports, with a resulting need for more resources for Customs' Commercial Operations. In light of these developments, full funding of these operations is essential to the successful operations of ports and to the ultimate goal of facilitating trade.

In the past, ports have opposed the establishment of all user fees on international waterborne commerce, including Customs user fees, because of their potential for impeding the flow of trade. However, given the fact that the "Merchandise Processing Fee" is now in place, AAPA supports the use of this fee to fund Customs' Commercial Operations, as originally intended. It is unfortunate that this has not occurred. Instead, those monies have disappeared into the general treasury. AAPA looks forward to reformulation of a Customs user fee structure that will ensure the strict allocation of user fee receipts to fund Customs' Commercial Operations.

At facilities owned by our member ports, the U.S. Treasury collected over $10 billion in Customs duties last year. User fees will increase this amount. In spite of this, many public ports currently furnish the Customs Service, at little or no cost to the federal government, with a variety of facilities and services, including warehouse, office and parking space, as well as office equipment and telephone service, among other things. The impetus for our largesse is the promise of better services, or perhaps the promise of less service if the facilities are not provided. In view of this fact, as well as the fact that the trade community pays for Customs' service through the user fee, AAPA believes that it is appropriate that Customs make a commitment to improve and augment the quality of service provided by its Commercial Operations. Funds generated by user fees on waterborne commerce logically should cover all costs related to the U.S. Customs Service's processing and facilitation of that cargo, perhaps even to the extent of paying for facilities provided.

AUTOMATION

History and Development

The Customs Service's Automated Commercial System (ACS) is a program designed to enable the trade community to interact electronically with Customs in order to exchange broker entries, cargo releases, ship manifests, and other information. The Customs Service, more than four years ago, solicited public port industry participation in the program, with the ultimatum from Customs Commissioner William von Raab to "automate or perish." Many members of the industry responded by undertaking to develop port "service centers" to serve the needs of their local port communities.

Since it induced ports to participate, Customs has been guilty of numerous changes in the direction and intent of its ACS implementation. Ports have been forced to develop their local systems without the benefit of consistent direction from Customs on design elements for port systems or a timetable for the implementation of those elements. The program also has been affected by the frequent turnover in Customs ACS personnel. At the outset of the ACS program, AAPA established a Special Committee on Customs Facilitation Procedures to work with Customs on the implementation of this program. However, until just recently, the Committee, over the course of its existence, has had difficulty getting dependable and precise policy direction from Customs' ACS personnel. This difficulty has deterred several ports from proceeding with the development and implementation of the AMS module.

ACS is composed of a series of "modules." These are programs for the transmission of certain types of information, i.e., Automated Broker Interface (ABI) and Automated Manifest System (AMS). The AMS module, which enables ports and carriers to electronically transmit cargo manifest data and information directly to Customs and to receive manifest information and cargo releases in return, is the module that port service centers principally provide. The system enables ports and carriers to better plan their terminal operations by receiving clearances for cargo before it arrives. This facilitates cargo discharge and distribution inland, and because the need to double-handle cargo is avoided, results in cost savings for shippers and carriers. AMS also provides ports with useful information about the shippers moving cargo over their facilities.

Downloading of Manifest Data

Since the inception of ACS, the public port industry has taken a leadership role in ACS development by providing service centers for their surrounding trade communities and spending millions of dollars in public funds to bring systems on-line. The ports' commitment to ACS has been based on a promise from the Customs Service that by providing a service to Customs and to their local trade communities through the communication and dissemination of critical information concerning cargo movements, they would be entitled to receive downloaded manifest data and cargo release information. Ports play an intrinsic role in the movement of cargo, and the availability of downloaded manifest data is essential to the concept of port service centers. Manifest data transmitted directly from Customs not only facilitates the movement of cargo over marine terminals, but it also coordinates critical information for all of the parties that have an interest in a shipment, including brokers, carriers, trucking companies and marine terminal operators.

The October 1984 enactment into law of the Trade and Tariff Act, which amended the Tariff Act of 1930 to mandate the public disclosure of certain available inbound manifest information, demonstrated the clear intent of Congress with regard to port access to manifest information. According to accompanying Report language (H. Rpt. 98-267), the legislation was proposed to "improve the U.S. competitive position in world trade by providing better access to import information. Fuller disclosure of this information can benefit. . .U.S. ports in planning and marketing of their goods and services . . . port authorities and government agencies will be able to use the expanded information base to determine where and when to allocate equipment and to identify expanding or contracting markets and bases for long-range planning and improving services. It will also enable them to identify and contact potential customers." Senate report language (S. Rpt. 98-308) demonstrated similar intent. Moreover, during House floor debate on H.R. 3398, Congressman Donald J. Pease (D-OH) stated: "...almost every major U.S. port authority is dependent on the availability of import data for long-range planning, improving services, and competing for shipping business," adding that the existing policies of the Customs Service served to "limit the import information publicly available and thus restrict the extent to which U.S. companies can benefit from the information."

After a long series of delays, ports now are just beginning to see the benefits they were promised when they made a commitment to ACS. AAPA, through its Special Committee on Customs Facilitation, has been an active participant over the course of several years in attempting to reach a workable solution that will benefit all parties. Despite this involvement, Customs' commitment to provide on-line access to manifest data has been plagued by missed deadlines and policy changes. On July 1 of this year, Customs began transmitting manifest data to ports, thus putting into place one of the elements that is critical to the fulfillment of ports' investment in automation.

Although the cooperative efforts between the Customs Service and the public port industry have accomplished much in recent months, problems still must be resolved. In particular, Customs has stated that a port authority "must develop the full technical capacity to transmit as well as receive AMS data" in order to be eligible to receive automated manifest data, release data, and the "master in bond" data. Because some port authorities' only clients are major carriers that already have developed their own automated systems, this requirement would mandate that those port authorities make huge expenditures for a capability that might never be utilized. The entire justification for port involvement in ACS is based on the benefit of receiving critical operational information in the downloaded manifest data, which is necessary to facilitate clearance of cargo. The alternative to this would be the non-involvement of such port authorities in ACS. Both of these extremes run counter to Customs' stated intent for the implementation of ACS, that is, the creation of a paperless environment. To resolve this problem, the consideration of each port authority and its circumstances on an individual basis would be appropriate in determining if this eligibility requirement is reasonable. AAPA looks forward to continued cooperation with the Customs Service in resolving these and any other difficulties and challenges that arise during the initial stages of downloading.

Unique Bill of Lading Identifier

Another source of long-standing uncertainty has been the Unique Bill of Lading Identifier formula. Resolution of this issue also was critical to those port systems that have been ready and waiting to interface with the Customs Service. It has been known since ACS development began that a Unique Bill of Lading Identifier would be needed for these systems to function at their full capacity. Consequently, the formulation of this identifier could and should have been resolved at the outset, three years ago, in order to prevent uncertainty, confusion, and wasted resources in bringing port systems on-line.

The U.S. Customs Service designed AMS to use the bill of lading number as an identifier in the processing of inward cargo manifest data and cargo release information. In order for such an identifier to function, however, each bill of lading number must refer uniquely to an individual shipment by a particular carrier or issuer. Because port systems have been designed to incorporate this feature, their software cannot achieve full interactive capability with the Customs Service until all participating carriers have the ability to issue unique bill of lading numbers.

AAPA is pleased that, as a result of a cooperative effort between the U.S. Customs Service and an industry task force composed of representatives from ports, carriers, terminal operators, and customs brokers, agreement has been reached on a solution that will benefit all parties concerned. AAPA hopes to continue working with the Customs Service and with other members of the ocean transportation industry to ensure the timely and effective implementation of the Unique Bill of Lading Identifier. Moreover, in view of the success achieved through the cooperative effort demonstrated by the Unique Bill of Lading Identifier task force, AAPA applauds the formation of the Customs Electronic Systems Advisory Committee (CESAC), which will represent the Customs Service, port authorities, ocean carriers, customs brokers, and marine terminal operators.

Marks and Numbers

From the viewpoint of operating ports, another necessary data element in AMS is marks and numbers. Although this is not a crucial factor in the identification of containerized cargo, it is essential for the correct identification of breakbulk cargo, such as steel pipe, rubber, or cocoa beans. Marks and numbers are an identification that is actually found on a particular package, and serve as the most logical and accurate means of locating specific cargo.

Chairman PICKLE. Thank you, Mr. Leach.

Now, we will hear from Mr. James Gordon, Director of the International Affairs of the Airport Operators Council International.

Mr. Gordon.

STATEMENT OF JAMES K. GORDON, DIRECTOR, INTERNATIONAL AFFAIRS, AIRPORT OPERATORS COUNCIL INTERNATIONAL

Mr. GORDON. Thank you, Mr. Chairman. I very much appreciate the chance for the Airport Operators Council International to speak before the committee this morning.

We represent all of the U.S. international airports, and we take a very strong view of the importance of this committee's work. Our objectives are to help our communities increase the trade and travel that benefit those economies and the citizens of the communities.

We feel that by reducing the costs and delays of air transportation we can increase the efficiency of the air transport system, and we can benefit all our citizens. We try to protect our communities' interests in all senses, both in securing the economic development and in protecting our citizens through the enforcement of laws, especially those regarding drugs.

At the same time, we have an ambivalent view of the role of the Customs Service. We provide very costly facilities at airports. These facilities are paid for by the communities and by the people who use the air transportation system.

The working relationships between airport officials and Customs officials at the local level are universally close and cordial, but it is troubling to us that Customs Service is unwilling and unable to work with us and the other organizations in solving its problems and in helping solve our problems and making the system work more efficiently.

There are a few issues I would like to underline. I think most have been mentioned by other witnesses here this morning, but we very much feel that speedy and efficient passenger processing can relieve the burden on our system.

A passenger on an international flight spends very little time getting to the United States. We feel that a passenger ought to clear Customs and immigration within 45 minutes of the time that the door of the airplane opens and he is on the street.

Passengers spend a long time, standing in line for one moment of question and answer with an inspector, and then they are on their way. We need to make that process more efficient. Otherwise, it harms the impression of service and efficiency that our country gives.

Second, we would like to underline the importance of adequate staffing for the Customs Service and allocation of inspection staffing and the procedures which with which the staff is used.

We would like to discuss the user fee. We would like to make sure that when Customs gets access to the user fee fund, as they wish to do, and as the funds were intended to be used, that the Customs Service provide a full and transparent accounting for the use of those funds. We would be reluctant to see those funds used for purposes other than the inspection of cargoes and passengers.

Finally, the issue of cargo processing becomes important, Mr. Chairman. The automation of cargo has not proceeded as rapidly and as smoothly as we would like to have seen it.

The automated commercial system is inconsistent, a moving target. The design has changed too many times in recent years. We would like to see it fixed so that ports and airports can develop efficient community systems to serve everyone.

We would like to see the Customs Service adopt innovative approaches to cargo clearances. We would like to see them work with the ports and with the airports to clear cargo through Customs while preserving enforcement. We feel that the inspection processes are not being expedited. There is a lack of cooperation at times with the industries and with the other inspection services. This friction and duplication gets in the way of the system.

Both the Customs Service and the Immigration Service are developing their own passenger data systems. This is duplicative. It is evidence of the problem that the two services have in working together. The Customs Service has been inspecting U.S. citizens' passports, has been inspecting all citizens arriving in the United States, and Customs is now reluctant to give up the delegated authority that they have had from the Immigration Service. This is a difficult problem that ought to be worked out. Customs is moving toward 100-percent inspection of all passengers. They are moving away from a system of bypassing the broad majority of passengers who enter this country without contraband or dutiable goods. We would like to see the Customs Service reorder its priorities in this matter.

Finally, we would like to suggest that Customs try to deemphasize the enforcement issue. It is important, but so is trade and tourism to this country.

In Customs' testimony earlier this year, their only mention of commercial operations was in connection with the large collections that Customs takes credit for. I would suggest that Customs is probably more responsible for reducing trade and thus, their collections, because of the inefficiencies of the system.

We would like to help them and see the committee help them improve that process.

I am going to cut it off, Mr. Chairman. I thank you.

[The statement of Mr. James K. Gordon follows:]

TESTIMONY OF JAMES K. GORDON
ON BEHALF OF
THE AIRPORT OPERATORS COUNCIL INTERNATIONAL (AOCI)
ON CUSTOMS SERVICE BUDGET AND PROGRAMS

Good morning, Mr. Chairman. I am James Gordon, and I am here today on behalf of the Airport Operators Council International, the association of governmental bodies that own and operate the principal airports served by scheduled airlines in the United States and around the world. AOCI member airports enplane more than 90% of total domestic and virtually all U.S. international scheduled passenger and cargo traffic. Worldwide, our member airports enplane two-thirds of all airline passengers and cargo on six continents.

Mr. Chairman, AOCI asks the Congress to provide the application of Customs Service resources to increase Customs' inspection capabilities and improve its ability to clear international passengers and cargo rapidly and effectively.

Briefly stated, AOCI hopes that the Subcommittee will require:

1) An increase in the insufficient number of Customs inspectors clearing international passengers and cargo arriving at our nation's airports. We hope you will call for more flexible inspector staffing and the adoption of new and more efficient clearance procedures for passengers and cargo. The number of new Customs inspectors needed can be kept to a minimum if the Customs Service's procedures are made more efficient.

2) Tougher application of the forty-five-minute maximum time standard for clearance of any passenger arriving on any international flight, and increased cooperation between the federal inspection agencies and with airport authorities to ensure that clearance time standards are met.

3) Application of regulations and procedures to expedite the movement of air cargo, including testing of the Centralized Examination Station (CES) concept, linked to a clearance time standard for air cargo.

4) Customs Service reexamination of the conclusions of the McKinsey & Co. report on air, sea and land cargo clearance computer systems, and Customs Service choices and decisions to fix the parameters and operating principles of its Automated Commercial System.

5) Application of Customs user fee revenues to benefit those who pay the fees, and transparent accounting for the way the fees are spent.

1. Passenger Clearance

The world economy is becoming increasingly oriented to services and leisure, and travel to the U.S., growing at over 10 percent per year, is becoming ever more important to our economy. Foreign tourism in the United States is an export of U.S. goods and services which helps redress the trade imbalance that has become such a serious economic and political issue. While we may import more Japanese cars than we export American cars to Japan, we are visited by more Japanese than the Americans who visit Japan. And the good news is that foreign tourist visits to the U.S. are increasing faster than U.S. citizen purchases of foreign cars.

It is vitally important to our economic well-being that we foster tourism to the United States. U.S. Immigration and U.S Customs inspection are a tourist's first encounter with America and the consumer service that is one of the principal attractions to foreign visitors. The impression we give during that first hour in America is indelible, but we presently indicate that we don't care how important foreign tourists are to our economy, and that we don't care about the individuals who come to our country.

The national agenda has many important priorities, especially the interdiction of narcotics at our borders, but we cannot afford to ignore the vital issue of passenger and cargo processing. In the past, the Customs Service has pointed to inadequate funding for the inspection of cargo and passengers as the reason for inadequate facilitation. With the collection of user fees, revenues should now be adequate for the needed staffing and facilities.

As in past years, we ask for more Customs inspectors at our gateways airports. While the volume of international arriving passengers will increase substantially in fiscal 1989, we know of no plans to increase the number of Customs inspectors at our airports.

Mr. Chairman, we know that our emphasis on the number of inspectors obscures our concern for improved inspection procedures. We want to shift the emphasis away from numbers and on setting and meeting performance standards for inspections. These performance issues are in the areas of procedures and staffing.

First, inspection procedures need to be revised so that Customs and INS processing is less time consuming and burdensome than it is today. Second, Customs staffing needs to be responsive to demand: the number of inspectors on duty should correlate with the number of passengers requiring inspection on any given day, at any given hour. The arriving passenger and the cargo shipper now pay for a higher level of service than is being provided.

Passenger Inspection Procedures

Most developed nations have adopted sophisticated, efficient, and facilitation-oriented inspection procedures (no less effective in terms of enforcement than our own), while the U.S. is still committed to individual passenger inspection. The development and nationwide application of a true bypass inspection procedure, similar to "red/green" procedures used in most of Western Europe, should be a top priority at Customs headquarters, in the regions and at the district level.

But in fact, Customs is pursuing its goal of 100 percent screening of all arriving passengers, separate from immigration inspection. This is in spite of recent Customs initiatives in this area and testing of new concepts for passenger inspection. Last summer, Customs tested a new "High/Low" inspection procedure, involving inspection of only those passengers who matched a risk profile, allowing the vast majority of passengers to move through the Customs area without having to stop. The Customs procedure was an overwhelming success, with most passengers delayed only as long as it took them to walk out the door. Contraband seizures improved markedly during two of the three months of the test, with a slight diminution in seizures in the last month coincident with a major Customs staff rotation and the need to retrain new inspectors. The program has been withdrawn pending the resolution of an issue involving the airlines' advance reporting of passenger information to Customs. We hope the Congress will actively support application and expansion of new procedures.

Customs Staffing Methods

Another area in which Customs' inspections can be improved is the responsiveness to demand. When airline traffic at an airport with ten flights grows by one flight per day, the growth seems manageable. But if the new flight arrives during the afternoon peak, simultaneously with a previously existing flight, disembarking 1,000 passengers into the arrivals hall, that 10% traffic growth causes a 50% increase in peak inspection workload.

We want Customs to be sensitive to this need to respond to demand. Passengers arriving during a peak period have paid for, and should receive, the same high level of service given passengers arriving during off-peak hours.

Traffic peaking is not the result of coincidence. It is caused by the result of careful airline schedule planning that allows the movement of people and cargo at convenient times, avoiding curfews and operating restrictions, and which maximizes the use of multi-million-dollar aircraft. The growing volume of time-sensitive cargo (not just overnight letters, but perishables, spare parts and other items), the needs of cargo shippers, and other consumer services are all considered in cargo flight schedules.

We hear, from time to time, that the arrival peaks of international passengers and cargo must be spread out for federal inspections. We believe that Customs has the duty to provide inspectors where and when the demands of air commerce dictate. Customs is a service organization, and to have passenger and cargo flight schedules determined by the availability of inspectors is to have the tail wag the dog.

Another issue is federal government policy that worsens the impact of living costs on Customs staffing. It costs more to live in New York or Los Angeles than it does in the communities of many smaller ports of entry. This fact of life seems to have escaped the federal government, since inspection service employees living in expensive areas are not given allowances for the higher cost of living. Not surprisingly, Customs employees given a choice of equally-graded positions at two different ports will move to the less expensive area. Since passenger and cargo traffic tend to be concentrated at airports in big cities with higher costs, the airports of entry that most need full Customs staffing are the ones with vacancies. This bias in real income between ports and regions needs to be redressed, not to favor one airport over another but to ensure that the passenger and cargo shipper receives the inspection service that has been paid for, so that our transport system functions most efficiently.

2. Clearance Time Standard

The most powerful tool of oversight is a measurable performance standard. Thus, to guarantee the efficiency and growth of travel and tourism to the U.S., we need to have a firm time standard for clearing passengers through federal inspections. Last year, Congress expressed its intent that 45 minutes after an arriving aircraft stops at the gate, the passengers should have cleared all federal inspection service processing. The 45 minutes is not to be an average clearance time, but rather a maximum clearance time for any passenger who is not given a secondary inspection, regardless of how busy or congested the arrivals hall may be. The last person off a Boeing 747 in the busiest hour of the busiest day of the year should be cleared through the entire Immigration, bag retrieval and Customs inspection process within 45 minutes after the "fasten seat belt" sign is turned off at the gate.

We raise this issue because average clearance time figures from airports have been used to claim compliance with the intent of Congress. The average may be 30 minutes, but taking an hour and a half to clear an individual through federal inspection processing makes standard airline connections impossible. The 45 minute clearance time standard is not arbitrary. Rather, it is based on the airlines' standard international connection time of one hour and a half.

The report language that accompanied the FY 1988 appropriations bill required the Commissioner to report on February 1, 1988, and August 1, detailing the compliance with the 45 minute standard.

Interagency Cooperation

The 45 minute maximum clearance time standard treats the clearance process as a whole. The passenger certainly perceives it as one procedure and we should start tailoring our legislative, administrative and procedural actions to treat the process as one. We hope you will require closer cooperation between customs, immigration, and agriculture and airport authorities so that inefficiency and duplication are kept to a minimum.

3. Cargo

Inadequate staffing levels and out-of-date inspection procedures are reducing the efficiency and, therefore, adding to the cost of shipping goods by air, while cargo traffic grows and becomes more important.

Customs has recognized the need for improvement and took the step of commissioning a study on ways to improve the level of service to commercial customers. We applaud the honest introspection of the Customs Service in having McKinsey and Company perform such a study, and the Commissioner and his management team should be commended. We hope Customs will repeat this in other areas and other agencies, such as the Immigration and Naturalization Service and the Department of Agriculture, will follow the example.

Cargo Automation

McKinsey and Company's report misunderstood the role that automated cargo clearance systems can play in the clearance and transshipment of air, sea and land cargo.

The report notes that air, sea and land cargo clearance systems are limited in their capability to enhance the automated clearance of cargo and their applicability to modern cargo transportation. This is the product of the authors having misunderstood such cargo clearance systems and having concentrated on the needs of very large importers, brokers and forwarders that handle the volume of business required to make automating individually worthwhile. McKinsey did not consult the airports that are developing community computer systems to create the intermodal and system-wide economies and efficiency that are needed.

Computerized clearance systems will eventually negate the need for any paperwork in the clearance of air, sea and land cargo. Only a relative handful of brokers, forwarders and importers in the U.S. have the financial resources to become automated on their own. It is vitally important that small operators have access to the automation capabilities of the most sophisticated brokers, forwarders and importers; if they do not, they will be run out of business and we will suffer from the higher costs and reduced service that accompany reduced competition.

Manifest Information

A further issue involving air, sea and land cargo clearance computer systems, known as "port systems," is the treatment of manifest data. At present, seaport systems are deemed to be "parties of interest" and therefore eligible to receive manifest data from Customs. There is a legal impediment to treating airport-based systems in the same way. As a matter of equity, vital to the smooth flow of cargo, air cargo clearance computer systems need to be deemed a "party of interest" by Customs. All of the types of cargo computer systems require the downloading of manifest information from Customs without discrimination, to provide the full measure of benefit to the community.

Central Examination Stations

In response to the McKinsey report, Customs intends to establish clearance time standards for air cargo. We endorse the concept of a clearance time standard for air cargo, just as for the clearance of international arriving passengers.

User Fees

Customs Service officials have expressed their desire to have direct access to funds generated by Customs User Fees, in a manner similar to that in which INS employs its User Fee Revenues. In principle, we favor allowing Customs to use those monies to improve and expand service, but we oppose Customs' expansion of the list of uses to which the funds would be applied, and we urge that Customs be required to make full and transparent accounting for User Fees that it spends, as does INS. User Fees need to be spent for services to those who pay the fees, not to subsidize Customs' full range of services to trade, and certainly not to subsidize police functions or other activities that Customs itself justifies in terms of our national interest. Detailed accounting for User Fees expended by Customs will allow us to be confident that those who pay User Fees will get what they pay for.

It is important that user fees be spent on the services directly consumed by those who are paying the fees, not only as a matter of equity but also as a treaty obligation. Most U.S. bilateral air service agreements require that user charges not exceed the full cost of the services provided and be equitably apportioned among categories of users.

Conclusion

In conclusion, Mr. Chairman, we have touched on a number of Customs issues that affect airports every day. We are impressed by the organization and dedication of the Customs Service under the helm of Commissioner Von Raab. The McKinsey and Company report is an extraordinarily bold step for a federal agency which we hope will be copied elsewhere. However, there are areas that require significant improvements before we can even consider ourselves on a par with comparable nations. A true red/green passenger processing system and greater responsiveness of staffing levels to demand are just two of these areas.

The budgetary and oversight influence of Congress over Customs is particularly important today. Whenever an issue as emotional as drug use grabs the attention of the nation, cool heads are needed to ensure that in our zeal to vanquish the foe, we do not harm the trade and tourism that are vital to our economy and society. Facilitation, the rapid and efficient processing of passengers and cargo, is not the antithesis of enforcement. That view must not be accepted, nor can it be an excuse for not providing services that travelers and shippers have paid for.

Mr. Chairman, thank you.

Chairman PICKLE. All right. Thank you, Mr. Gordon.

Now, I want to thank the panel for your testimony. All of it will be made part of the record.

Mr. O'Brien, you started off your testimony by saying that Customs has unilaterally implemented requirements or procedures in the sense that you said have the potential for the interruption of the international transportation system. Can you give us some specific examples of what you mean, how the Customs has unilaterally taken this position?

Mr. O'BRIEN. Yes, Mr. Chairman. We had two examples that come to my mind specifically.

They were referred to briefly in Mr. Leach's comments. One was a regulation which was sent out by Customs headquarters which required that a high-security-type seal be placed on every container of merchandise which was entering the United States and was moving to interior destinations.

I am sure that Customs had a legitimate concern that in the absence of some kind of secure seal on the container, that it might be possible for the contents of the container to be manipulated during a portion of its inland transit. As a practical matter I think the industry was able to show that would be extremely difficult to accomplish because, at least in the case of the west coast ports, those containers are moving in what we refer to as double stack trains where the containers are stacked vertically in compartments on the train, extremely difficult to access for anybody trying to break into the container.

The nature of the trains, they do not stop at junction points, there schedules are so tight that they move as a through train, bypassing junction points where the train might otherwise be sitting on a side track.

The basic problem was that a regulation of that type without any prior discussion with either the shipping line or the port industry, clearly offered the potential to create chaos in the system that I described earlier.

Chairman PICKLE. Was that so ordered, was a seal required?

Mr. O'BRIEN. It was ordered and there was a significant reaction from the industry. That generated a dialog with the Customs Service. Steps were then taken through a combination of actions on the part of the shipping lines moving to place a special type of seal on the container at port of loading, which was readily identifiable, had it been broken, and also a system where Customs now selectively spot checks those seals at the port of unloading.

But to require that every individual container physically have a new seal placed on it by a Customs inspector before it can move into the inland transportation system would have been extremely disruptive.

Chairman PICKLE. Well, then, the unilateral decision is still in effect. Did Customs ever rescind their order? Apparently they didn't. They do it spasmodically now?

Mr. O'BRIEN. They modified it to the practice I have now described. It is now done on a selective basis, rather than the original intent, which was to have physically every container sealed.

Chairman PICKLE. Have you got any examples?

Mr. O'BRIEN. The other one that comes to mind had to do with the concern that the Customs Service had over the country of origin of textiles manufactured overseas. Particularly as they related to the quotas which are in effect.

So in that case a directive was issued by the Customs Service to require the physical inspection of the contents of every container of textiles which was entering the United States.

Again, it was the type of order which, if fully implemented, would have totally disrupted the highly capital intensive transportation system which has been developed, which interlocks the ships with the trains and trucks that distribute the cargo.

That also resulted in a dialog after a great deal of consternation on the part of the industry, and now it seems to be working well, but I think the point of both of those examples and I only cite them because I think we have to be conscious that something like that could happen again.

We have seen a much improved communication, I believe, with the Customs Service on issues like that, but clearly I think we would become overly complacent about it, and the potential exists for us to slide back into that type of situation again, and the distribution system can't afford that to happen.

Chairman PICKLE. Are the ports getting full value for the user fees paid, and the user fees that are currently assessed? Are the funds built from user fees being used for the ports or are the ports being short circuited in funding. Can you or any of you panelists please explain?

Mr. O'BRIEN. Well, in our case, the fee is assessed against the client, the importer, for his account. However, it is not being used for improved facilitation at the ports. It is my understanding that the funds raised through that process are held in the general fund and, as a result, it is another cost layer which is placed upon the client of the port and in this instance for which they are not receiving improved facilitation.

Mr. LEACH. Mr. Chairman, if I may add, I think in that category we might talk about the provision of facilities to the Customs Service without charge, which we are obliged to do if we want to get proper service. I think with the user fee, on top of the Customs' duties which they collect, are some $10 billion last year, Customs could pay for the facilities they use of ours. We are providing them with facilities and services without cost, and have discussed with Customs Service the potential of their paying for those facilities now that there is a user fee. So far without much success.

Mr. JUDY. We make a point. We have got to put in the law some form of transparent accounting system so we can all see what the benefits we are and to be sure we are meeting treaty obligations including our GATT obligations. We don't know where that money is going. We have a general idea, but we wonder how it is handled.

You know, Customs, when they change the percentage on passengers and cargo, they can eat up $5 in additional costs just by increasing the amount of inspections of passengers and cargo. Meaning they can require twice the staff. So it is an endless process. That is one of the basic reasons why we need some basic standards in clearing passengers and clearing cargo.

We need the 45-minute rule for passengers. We can then sit back and evaluate the performance of all the Federal inspection agencies when they inspect with passengers.

I think it would be a most helpful management tool for those agencies, and also for Congress. Then we can start to see the effect of that $5 immigration fee and $5 customs fee on passengers. What is the impact of how the money is being used? We can look at statistical sampling techniques and evaluate their benefit.

We use statistical sampling in some of the most crucial industries such as advertising where billions are invested based upon statistical sampling models. We have got to get at this whole process and we have got to begin by an accounting system and by implementing basic standards for Congress to measure performance.

Chairman PICKLE. Well, Mr. Judy, you say that the automated airlines appear to be trying to stop the development of airport community systems to prevent the nonautomated airline broker from gaining access to the same computer capability. What do you mean by that? What are you getting at? I don't understand that.

Mr. JUDY. Well, first of all, in the sea systems and the air systems, the airports and seaports put in the systems and they provide them to the shippers, agencies, to air carriers and others. Obviously, these systems are extremely expensive and require an enormous investment.

The reason why such systems are so valuable is because we provide automation to every form of user. In the world of air transportation today, passenger reservation systems that the airlines control and manage, prevent competitive entry and create a huge competitive edge over noncompetitive carriers.

I am not questioning the airlines not attempting to prevent us from developing those systems, that is their business. What we are saying is, the committee has to be aware of the fact that we want the whole industry automated. We want to give every user in the system the opportunity to clear cargo through an automated system, just like the average air carriers, and we want to help provide those systems in the future throughout the world.

Chairman PICKLE. How would that practice prevent the nonautomated airlines from using that information?

Mr. JUDY. They input the airway bill and manifest information and the airlines are saying to Customs, "We don't want you to download the waybill information to community systems. It is commercial information."

And we are saying, "Well, the sea systems manifests are being downloaded to community sea systems, why not airports?" Obviously, we are tired of debating this issue with various carriers and associations in regard to this problem, and airports are not asking for commercial information, we don't want the consignee's name.

We don't want the information that allegedly seaports utilize from a competitive standpoint, to sell information or transfer it to others for competitive reasons. All we want is the basic indentification data of the cargo.

Chairman PICKLE. Now, Mr. Leach, you say that one of the first things AOCI hopes this subcommittee can help advance is an increase in the number of Customs inspectors. That seems to be a recurrent theme to most of the people who testify. Are you understaffed or do you have too few inspectors during the day or at certain times at night, or just a common problem?

Mr. LEACH. I think it is a common problem that Customs has been given new responsibilities without new resources, and therefore, they are spread thinner and thinner, and you are getting less and less service on the commercial side. So I think it is primarily a function of how the resources are being used.

Chairman PICKLE. If I recall it, the last few years, Customs has not used all the funds appropriated for personnel and have reduced personnel. I don't know whether that is a complete, accurate statement. But they have not added personnel, and yet, every group that testified said they need more inspectors, and need more equipment, and yet Customs hasn't used the funds appropriated or the user fees charged to the import community. The funds are apparently there and not being used; is that a legitimate observation?

Mr. LEACH. It may be a problem of allocation of resources. Sometimes you hear of cases where there are surplus Customs personnel in one location and a shortage someplace else.

Chairman PICKLE. Well, this is your chance to tell the subcommittee, do you need more personnel and more inspectors? All of you.

Mr. GORDON. Yes, sir, we do.

Chairman PICKLE. Anyone disagree with that? Well, you are not speaking very loudly whether you want it. Do you want it or are you afraid to say anything?

Mr. SCHULZE. Can I join in, Mr. Chairman? Have you seen a shift from enforcement and cargo service into the narcotics detail, the narcotics end of it? Do we need a leveling if we don't want to take away from narcotics? But what recommendations would you have as far as personnel?

Mr. JUDY. I hate to keep going back to this, and maybe I am not making myself clear, but I really feel from the process of inspecting the commercial aspects of Customs, and I get back to the passenger again, if we were to put a standard of 45-minute-clearance time for passengers when the plane arrives at the gate, through the time the passenger leaves the Customs facility, the meeting and greeting area, and if we were to put a measurement process in to measure that 45-minute-clearance time we would have a great opportunity to measure Customs performance, it would invigorate the system if we all worked together and if we got on the task right now of beginning to look at what type of minimum clearance times we need for cargo.

We know that the automated systems that we are putting in place are a high priority for this committee, because out of that we will have the ability to run a paperless system. Understand this, air cargo is in the air 8 percent of the time.

In other words, from the time that cargo leaves the shipper until it arrives at the door of the consignee, that cargo is in the air 8 percent of that time; 92 percent of the time, it is on the ground. If we were to get these automated systems in and develop standards to measure the clearance time for cargo and establish them, we can measure the effectiveness of staffing. We have to recognize the need for those standards. Once we do that, we start a whole new era of really delivering service to America's industry and the people of this Nation, because you know that we are doubling in trade. America is becoming an international trader.

We have to understand that the whole nature of our gross product is changing radically, and if we are going to compete just in time concepts or provide industry with the necessary infrastructure, we have to shake the industries up.

Today, we can't compete as a nation. You know, it is embarrassing when we compare the performance of this Nation to other Western nations in regard to Customs clearance, especially in the passenger system. We had a high-risk/low-risk system put in Miami that was nothing but a red-green system by another name. We expedited passengers through there at a phenomenal rate, and we collected and caught more contraband than the old system.

Chairman PICKLE. Are you saying that 45 minutes is too short, or——

Mr. JUDY. You would put a standard in and say the standard for clearing passengers through the ports of entry to the United States is 45 minutes, we want to see that accomplished.

Now, we have many studies that indicate that that 45 minutes is very reasonable. Keep in mind, after that 45 minutes, that passenger has to leave and connect on a domestic flight. He needs to go through more complex security systems with his baggage now when he checks back in, so that 45 minutes is only the time that they have available to catch a connecting flight.

That matches the international standard of about an hour and a half. There is no reason that we can't do this as a nation.

Chairman PICKLE. Well, one of you pointed out, I believe it was Mr. Leach, that we want to process cargo fast, but we also want to process passengers, and that a great many of our passengers into this country are Japanese, and that they come here in bigger numbers than we transport cars.

Mr. JUDY. That is true.

Chairman PICKLE. To or from Japan. Meaning that tourism is very important. Now, do we have sufficient staff to handle Japanese tourists, or people wherever they come from? Are we sufficiently staffed at the airports to take care of the processing of passengers?

I am addressing Mr. Leach.

Mr. LEACH. No, Mr. Gordon is from the airport's side.

Mr. GORDON. That is in our testimony, Mr. Chairman, and we feel strongly that Customs does not staff us up well enough. At one airport in Texas that I visited last week, that handles about 1.8 million international passengers a year, and generates about $3.5 million in user fees, there are 27 Customs officials based at that airport and using a rough average that Customs gave me a while back, they spend $1.9 million on their staffing, against the $3.5 million that they generate in user fee revenues.

We would like to see some of that revenue applied to inspecting the passengers. And the same thing applies to cargo.

Chairman PICKLE. Have you expressed that to Customs?

Mr. GORDON. We have tried.

Mr. JUDY. I have been working with them for 10 years.

Chairman PICKLE. For 10 years, you have been trying to get more personnel?

Mr. JUDY. Sir, yes, with constant annual pilgrimage here, and we are frustrated. It is very difficult for me, I feel a real responsibility to our Nation. You just don't throw resources at everything. We know that international passengers travel to the United States is growing, and there is a natural need for more inspectors, but we get frustrated at the systems, how they consume resources unnecessarily, so we come to you from both sides.

We know that there is a normal need for increased inspection, but we are driving for and begging that we put some standards in so that we can all determine what staffing we need from some standard.

We can say what we need in terms of people, and, Mr. Chairman, you have got to understand, one district can wink and change the inspection of passengers, raise it 20 percent, and you need 20 percent more inspectors, or they can lower the time it takes to inspect a passenger by 20 percent and use 20 percent less.

We don't know and again, it pleads the point that we have got to start to understand that you need standards. You need sampling and all of those things in place so we can judge whether the inspectors that we have are being used economically. We all see this, the frustration of resources not being used properly; yet we come to you and want you to pile on more resources.

Yes, we do need more inspectors, Miami is desperately under staffed. We have several unusual situations. Now, New York, Miami and Los Angeles have some very unusual differences from other U.S. international airports, for example. We are large ports, very complex ports, we are hard-working ports, we pour people through. We are ports where novice inspectors are sent to gain experience, and when they get experience, and through seniority systems, they move out, and we get another round of inexperienced inspectors.

But on top of that, we have the type of passenger that comes from high-risk countries versus—and I don't mean to put them down, but in Atlanta, most of their passengers originate from Europe, which are lower risks. We have high-risk passengers arriving in New York and Los Angeles as well.

So, we need, we maybe need 20 percent more inspectors than you would need in Atlanta on a standard basis. When the standards are established in Washington, they measure all of the performance on 80 inspections per hour per inspector, and that becomes the national standard where regardless of where added workload warrants exceptions.

And we get frustrated. That is the job of Customs, to recognize this. But if we get a 45-minute standard in, the quality of the requests that you will hear in testimony will improve. We can measure our passengers when they arrive through the system. We can give you computrized reports and give Customs, Immigration, two weeks and three weeks in advance—48 hours, 72 hours in advance of what type of inspection staffing they will need.

There is so much we can do as a team effort. But if you don't have standards, we are manipulated.

Chairman PICKLE. I appreciate your suggestion about the standards.

Mr. LEACH. I think in that regard, the model we have mentioned would help to establish the standards by which we could measure——

Chairman PICKLE. What?

Mr. LEACH. A model of personnel allocation. Create a standard so you can measure against it, and test it.

Mr. O'BRIEN. Although we have had severe staffing problems in the past, I think the authorization and appropriation process in the Congress, and the emphasis on facilitation for many of those positions has assisted that situation greatly.

But in a dialog with Customs, what we have found is that there is a consistent difference between the authorized positions and what they refer to as "full-time, on-board" positions. And this is a function of attrition within the Service, difficulty in recruiting, and in many cases protracted times in recruiting; an experience last year where inspectors had been recruited, but there had been a reduction in the funding of the law enforcement training center, and as a result, those inspectors could not be put through the training process.

So, I think again, it is a system where the authorization-appropriation process is most important, but how that process is managed and perhaps in some cases, there are factors which are beyond the direct control of Customs, I think this is where the industry needs to cooperate with the Customs Service, to ensure that the resources are properly used.

Chairman PICKLE. Well, I think the committee would agree with that statement. It is a cooperative effort between industry and Customs to make the system work. What we are concerned about is, it seems every time we talk to some of you individually, you complain that you are not getting personnel, you don't have the right equipment, and that arbitrary decisions are being made. Yet, when you give us your testimony, you mute your complaints and your observations.

And we are not trying to cause a revolution here, we just want to know what you need. And we are not trying to throw money or people at Customs, but we do know that tourism is increasing, air cargo is increasing, people are moving about more and trade is increasing.

If we can't handle the trade movement, the United States will be left out on an international basis. So, here we have a chance to put down on the record what Customs need and what is the best way to handle it, and it must be a cooperative consideration. That is what we will keep in mind.

Mr. LEACH. Mr. Chairman, if I may, there is something that we have talked about, but it wouldn't cost a thing to implement, and that is uniformity. I mean, we see—delegation of authority is fine, but when you have districts with such diverse interpretations of what is being done and the law—and how to interpret the law, it is ridiculous, and it is not just the Customs, we have cases where coffee is turned down in Houston, it goes over to New Orleans and is accepted, and then trucked back to Houston.

I mean, that is an inconsistency that is very hard to understand.

Chairman PICKLE. Well, each port authority can operate their own rules?

Mr. LEACH. Not port authority. In this case, it was USDA that was ruling that cargo inadmissible into the United States, and when the importer took it over to another port, for some reason, it becomes admissible.

Chairman PICKLE. And that is why you need more uniformity or standards?

All right, I hear you. Mr. Schulze?

Mr. SCHULZE. I thank you, Mr. Chairman, and this panel, their testimony has been interesting and informative, and we will study your full statements.

I especially appreciate Mr. Judy. I have had a great deal of discussions with him over the years, and always appreciate his input. You do a tremendous job down there under difficult circumstances, and we appreciate having your input, even if it is not at a formal hearing such as this.

So, as time goes on, we would appreciate that continued input. Mr. Chairman, in the interest of time, I will not pursue questions at this time.

Chairman PICKLE. All right, we will submit additional questions to you. We would like for you to answer them as quickly as you can, because we are trying to get documentations made of all of these various problems we have got. And your response would be appreciated. Thank you very much for your testimony.

Mr. JUDY. I would like to thank you for the job that Mr. Arnold and Mr. Schulze both do.

Chairman PICKLE. Now, the next panel will be panel No. 4, and that will consist of Joseph Mayer; Richard Cooperman; Charles Bremer; and James Chenoweth.

Mr. Joseph Mayer is president of the Copper & Brass Fabrications Council. Mr. Richard Cooperman is executive director of the Aluminum Recycling Association. Charles Bremer is director of international trade of the American Textile Manufacturers Institute. And James Chenoweth is chairman, Customs Liaison Task Force, American Iron & Steel Institute, and director of corporate affairs, Lone Star Steel Co.

We will ask Mr. Mayer, if you will proceed with your testimony first.

STATEMENT OF JOSEPH L. MAYER, PRESIDENT, COPPER & BRASS FABRICATORS COUNCIL, INC., ACCOMPANIED BY DAVID A. HARTQUIST, COUNSEL

Mr. MAYER. Mr. Chairman, I wish to thank you for the opportunity of presenting the story of the Customs Service and U.S. imports of brass mill products.

I am Joe Mayer, president of the Copper & Brass Fabricators Council, a trade association consisting of 19 U.S. brass mill companies which together account for more than 80 percent of American production of brass mill products. With me is Skip Hartquist of the law firm of Collier, Shannon, Rill & Scott.

Although small in relation to the steel and aluminum industries, brass mills perform the same functions as those industries in supplying metal in basic shapes which are essential to the three most important areas of our economy: building construction, motor vehicle manufacturing, and the electronic and electrical industries.

The committee has received substantial testimony on how the Customs Service has failed to facilitate and has, in fact, impeded the flow of legitimate foreign imports.

Our story, conversely, is how the Customs Service has permitted illegally priced imports to enter this country free of any impediments whatsoever. Our story has three elements:

First, excess brass mill capacity exists worldwide. Price competition is fierce and sales success can be determined by as little as a penny per pound. The U.S. market for brass mill products is by far the world's largest. In recent years, 17 countries have targeted dumped brass mill products on the U.S. market.

Second, U.S. brass mills have responded to this predatory pricing of imports since 1985 by initiating 14 unfair trade cases against 11 countries. It has proved dumping by all 11 countries and illegal subsidy programs by 3 of the countries.

In addition, the council has petitioned the Department of Commerce to initiate monitoring of six additional supplier countries which we believe are also illegally dumping products in the United States.

No other American industry can match the efforts of the U.S. brass mill industry to ensure that fair prices prevail in the American marketplace.

The third and final element of the story is the performance of the Customs Service in ensuring that dumping and countervailing duties are collected on products under order legally entered and that such products are not illegally entered. Sadly, Customs cannot offer the faintest assurance to our industry or this committee and the American public on either point.

At great expense and effort, our industry has proven in 14 separate cases that foreign companies have regularly and over an extended period of time illegally priced their products in the American market.

After winning these hard-fought cases, industry depends on the Customs Service for enforcement. Our industry has found, to its sorrow, that what the Customs Service depends on to enforce orders against companies which have been found behaving illegally in repeated instances over extended periods of time is, incredibly, the honor system.

Paperwork prepared by these demonstrated violators of our trade laws is checked, if at all, for nothing more than the filling of the required blank spaces and arithmetic. Products themselves are virtually never inspected. Such inspection as does take place is usually technically inadequate to ensure that the alloy and gauge of the material are correctly listed.

It could be expected that an honor system such as that used by Customs would insist on accurate and complete records. Nothing could be further from the facts. Customs simply has no reliable or accessible records concerning the amount or source of dumping or countervailing duties it has collected.

Taken together, this lack of either inspection or records regarding the enforcement of our unfair trade laws constitutes an appalling breach of duty on the part of our Government. In a nation experiencing unsustainable trade deficits, such a breach of duty cannot be permitted to continue.

Our complete statement, submitted for the record, outlines the steps the council believes must be taken in coordination with the Department of Commerce to correct this breach.

These steps fall into two main areas. First, Customs must dramatically expand and improve its physical inspection of products to a level which affords statistical assurance that fraudulent entries will be discovered in a timely manner.

Second, Customs must computerize its statistics on unfair trade duty collections without further delay. Given today's electronic data gathering capabilities, collecting unfair trade duty statistics on the equivalent of matchbook covers is unacceptable.

I thank you for your attention.

[The statement of Mr. Mayer and Mr. Hartquist follow:]

STATEMENT ON BEHALF OF THE COPPER & BRASS FABRICATORS COUNCIL, INC.

BEFORE THE SUBCOMMITTEE ON OVERSIGHT
COMMITTEE ON WAYS AND MEANS
UNITED STATES HOUSE OF REPRESENTATIVES

ENFORCEMENT IN ANTIDUMPING AND COUNTERVAILING DUTY CASES

This statement is submitted on behalf of the Copper & Brass Fabricators Council, Inc. ("Council"), and its nineteen member companies (see Appendix A for a list of the Council's members). The Council is a trade association which represents the principal copper and brass mills in the United States. These mills together account for the fabrication of more than 80 percent of all copper and brass mill products produced in the United States, including sheet, strip, plate, rod, bar, and both plumbing and commercial tube. These products are then used in a wide variety of applications, chiefly in the automotive, construction, and electrical/electronic industries.

Beginning in the late 1970's and carrying forward into the 1980's, imports of extremely low-priced copper and brass products into the United States grew in volume significantly and rapidly. By 1984, for example, imports of C.D.A. (Copper Development Association) 200-series brass sheet and strip totaled over 184 million pounds or nearly 29 percent of apparent U.S. consumption. Brass sheet and strip are the backbone of the United States domestic industry and are further made into such diverse products as automotive radiators, ammunition, electrical and electronic parts, and jewelry. Another instance of increasing imports is that of low-fuming brazing rod, a more specialized product primarily employed in the bonding of dissimilar metal components. Between 1982 and 1984, imports of low-fuming brazing rod jumped from 2.7 million pounds to 4.3 million pounds, a rise of 59 percent.

Confronted by the erosion of our markets in the United States, we commenced in early 1985 a series of antidumping and countervailing duty cases. As the result of these efforts, the Commerce Department to date has issued (a) antidumping duty orders against imports of brass sheet and strip from Brazil, Canada, France, Italy, Japan, The Netherlands, South Korea, Sweden, and West Germany, (b) countervailing duty orders against imports of brass sheet and strip from Brazil and France, (c) antidumping duty orders against imports of low-fuming brazing rod from New Zealand and South Africa, and (d) a countervailing duty order against imports of low-fuming brazing rod from New Zealand. Thus far, in other words, this domestic industry has succeeded in securing eleven antidumping duty orders and three countervailing duty orders.

In addition, under a new provision of the antidumping law, we have recently requested that the Commerce Department monitor for possible dumping and investigation imports of brass sheet and strip from six additional supplier countries -- Argentina, Hungary, Mexico, Switzerland, the United Kingdom, and Yugoslavia -- that appear to be engaging in dumping in an attempt to fill the gap left by the countries that are already under order. Our request has been pending since October 1987 when it was first submitted informally to the Commerce Department for review. We feel that the statutory prerequisites for monitoring have been satisfied and that monitoring is consequently mandated under the law. The Commerce Department nevertheless has deferred action on our request.

During our prosecution of these unfair trade cases, and particularly since their antidumping and countervailing duty orders began to come into effect in the various cases in the latter part of 1985, we have become increasingly concerned with the issue of enforcement in antidumping and countervailing duty proceedings. Above all, we have focused on two major questions: (1) whether antidumping and countervailing duties are effectively being collected on all affected entries of merchandise; and (2) whether there are adequate procedures now in force or under consideration to detect fraudulent attempts to circumvent the antidumping and countervailing duty laws. These questions, in turn, have raised two further inquiries: (1) whether the Commerce Department and

Customs Service's respective roles with regard to enforcement and how they are to coordinate with each other are adequately set forth under the statute or need to be more sharply defined; and (2) whether amendment of the antidumping and countervailing duty laws would be wise so as to make the enforcement process more transparent and accessible to petitioning United States domestic industries.

Through numerous meetings with personnel from the Commerce Department and Customs Service over the last several years, we have come to some conclusions about the present system of enforcement and how it might be improved.

First, it appears that neither the Commerce Department as the administering authority of the antidumping and countervailing duty laws nor the Customs Service knows whether antidumping and countervailing duties are effectively being collected on all affected entries of merchandise. While the agencies give assurances that the duties are being paid, in fact there is no standard reporting system which reliably keeps track of the data necessary for an accounting.

At one stage, upon special request the Commerce Department laboriously gathered data on estimated antidumping duties deposited during January-November 1987 for imports of low-fuming brazing rod from New Zealand. Attention was concentrated on this case because imports of low-fuming brazing rod from New Zealand have actually increased since the unfair trade orders went into effect and have remained at low prices despite a cash deposit rate of 26.93 percent ad valorem. Confronted by these circumstances, one of the two remaining U.S. producers of this merchandise was forced to cease production of this product. The review was reassuring in that it was found that the cash deposits had been made, but it was disquieting because the review was so limited (a single eleven-month period, one producer with relatively few shipments, and only two principal ports of entry) and punctuated that the agencies do not maintain these data in an organized, aggregated way as a matter of course. At the conclusion of this exercise, we were essentially told by Commerce Department personnel not to expect similar summaries for other cases because the amount of research involved would be too great.

Instead, we have been informed of the so-called blue-line report, which derives its name from the underlining in blue pencil of certain data in entry papers that Customs import specialists at the ports are supposed to perform. The data thus highlighted are then to be stored in a central computer and provide an on-going tally, by case, of the antidumping and countervailing duties being collected. This blue-line system is to be operational by the end of 1988, but it remains to be seen if this schedule can be met or how efficient this system will be. The agencies have acknowledged that the blue-line system has had problems of incomplete reporting in the past and has not been dependable. It is not clear how precisely these previous difficulties are to be overcome.

Second, despite the incentive that exists for foreign exporters and their importers in the United States to evade antidumping and countervailing duties fraudulently, there seems generally to be little more scrutiny given to imported merchandise that is subject to an antidumping or countervailing duty proceeding than to merchandise that is not. In conjunction with the low-fuming brazing rod and brass sheet and strip cases, we have on multiple occasions voiced our fears to the Commerce Department and Customs Service that evasion of those orders has been occurring and have shared the evidence available that has suggested subterfuge. Among the techniques cited have been illegal transshipment, misclassification, and reimbursement of duties by the foreign producer or exporter to its U.S. customers. To date, none of our efforts to encourage greater Customs scrutiny has been fruitful. From the domestic industry's vantage, the Customs Service and Commerce Department look like "black holes" which swallow up, not follow up, allegations of fraud. This judgment may be somewhat harsh, but it reflects the fact that almost invariably nothing seems to happen in reaction to the requests by the Council and its companies for investigations.

Third, from our discussions with the Commerce Department and Customs Service, we have been left with the impression that the two agencies are in disagreement as to their responsibilities and authority under the statute with respect to enforcement. The Commerce Department, on the one hand, has indicated that its tasks are confined to the conduct of original investigations and annual reviews to calculate margins of dumping and subsidy amounts and then to the transmittal of instructions to the Customs Service to assess and collect the extraordinary duties. In the view expressed by the agency, the statute does not authorize the Commerce Department to do more. Enforcement is left to the Customs Service. On the other hand, the Customs Service has explained that it looks to the Commerce Department, as the administering authority of the antidumping and countervailing duty laws, for its guidance and instructions. The upshot appears to be that, for lack of directions and a meaningful reporting system, import specialists at the ports are left largely unsupervised in their implementation of the Commerce Department's instructions.

In addition to this fundamental confusion, the Council and its companies believe that there is inadequate coordination between the Commerce Department and the Customs Service in carrying out different decisions made by the Commerce Department under the antidumping and countervailing duty laws. Examples of the occasions when coordination is necessary -- from the initial suspension of liquidation to the monitoring of suspension agreements and persistent injurious dumping from additional supplier countries -- are listed in Appendix B. Once more, the pattern seems to be that the Commerce Department promulgates instructions through the Customs Service's headquarters and that no one supervises the ports thereafter to ensure that the instructions have been received and are being carried out properly.

Fourth, the whole enforcement process is largely shrouded from the petitioning domestic industry, which, through its counsel, is well-situated in many respects to assist in the policing of antidumping and countervailing duty proceedings and has a vested interest in effective enforcement. One particularly aggravating illustration of this problem is the Commerce Department's refusal during the administrative review phase to provide the domestic industry's counsel in confidence with the names and shipment data of the foreign producers and exporters of merchandise under order and, at the same time, as a matter of policy to review only those foreign producers and exporters named by the domestic industry in its request for review. The Commerce Department bases this policy on the belief that the domestic producers will always know who their foreign competitors are, but this is not always true, particularly where merchandise is sold through middlemen. Thus, important foreign companies may go unreviewed. Instead, as a matter of course the Commerce Department should obtain from the Customs Service a list of all companies abroad that are exporting to the U.S. merchandise subject to an antidumping or countervailing duty order and share this information and relevant shipment data with the domestic industry's counsel.

As a result of our experiences in the enforcement area, the Council and its member companies have been struck by how little accountability there is of the Commerce Department and Customs Service in their enforcement of the antidumping and countervailing duty laws as discussed here. Specifically, the agencies do not -- and seemingly cannot at present -- render an accounting of the antidumping and countervailing duties collected in a case. Nor is there any procedure by which the agencies actively and in a disciplined manner seek out fraudulent circumvention of antidumping and countervailing duty orders with the domestic industry's assistance and collaboration. Efforts by the Council and its members to stimulate activity have appeared to have had very little impact. And, as just noted, at the most rudimentary, organizational level the agencies do not appear to work in tandem except superficially. They are in such doubt about their enforcement responsibilities that they simply point to each other when the domestic industry asks for help. The domestic industry is left without any real recourse.

In the judgment of the Council, there is room for significant improvement in the agencies' enforcement of antidumping and countervailing duty proceedings. We recommend a number of practical steps:

First, a system must be instituted that accurately and continuously compiles the data necessary to answer the basic question of whether antidumping and countervailing duties are being timely and fully assessed and collected. So much effort and resources are devoted to the calculation of these duties in the first place that it is indefensible not to have such a system.

While the agencies themselves do not seem to dispute the pressing need for a system, they have thus far been unable to create a system that works, despite considerable attempts over a number of years. The blue-line system has not yet been successful, and the agencies recognize this failure. In the agencies' strivings to correct the blue-line system's deficiencies, therefore, the critical factor is whether the agencies can overcome the logistical problems that have been experienced and devise a workable program. This project will require tremendous attention to detail.

Continued congressional oversight here and regular progress reports that are published and commented on by interested parties should be integral to the creation of this system. Once a functioning blue-line system is in place, domestic industry should have access at least to non-confidential, aggregated data showing total antidumping and countervailing duties collected by country. In addition, through counsel under an administrative protective order procedure, domestic industry should have access to company-specific blue-line data.

Second, fraudulent circumvention of antidumping and countervailing duty orders should be seen as something that will be regularly attempted. The agencies should be prepared for this likelihood. There should be a standard operating procedure under which imports covered by an antidumping or countervailing duty proceeding automatically undergo an intensified clearance through customs. Not only should the entry documents be flagged, but there should be increased physical inspections on unannounced occasions. These physical inspections should be both of shipments of the merchandise under order and also of shipments of ostensibly other products by affected foreign firms for possible misclassification. Moreover, greater efforts should be taken to ensure that the foreign exporters do not themselves pay the antidumping and countervailing duties in lieu of passing on the cost of those duties to their U.S. customers in the form of higher prices. The European Economic Community, it is interesting to note, has just announced new provisions for this purpose.

Once again, it can be expected that considerable thought will need to be given to precisely how the agencies can tighten up their procedures to detect and prevent fraudulent circumvention of antidumping and countervailing duty proceedings. The starting place for this project should be a thorough review and report of what procedures the Commerce Department and Customs Service currently have in force, not so much as to fraud generally but as to fraudulent circumvention of antidumping and countervailing duty proceedings specifically. From that point, details can be fleshed out concerning what measures would be helpful. The governing principle throughout should be achievement of an intensified entry and physical inspection of merchandise covered by an antidumping or countervailing duty proceeding. Continued congressional oversight with periodic public reports and opportunities for interested parties to comment on the progress being made should be involved here.

Third, there must be an end to the apparent confusion of the Commerce Department and Customs Service over their respective roles in the enforcement of antidumping and countervailing duty proceedings. Correlatively, there must be the closest possible coordination between the two agencies if the antidumping and countervailing duty laws are to be administered smoothly.

The Commerce Department should be recognized as having ultimate authority and responsibility in enforcement matters. This is consistent with the status of the Commerce Department as the administering authority of the antidumping and countervailing duty laws. It is also consistent with the decision of Congress to diminish the Treasury Department's functions under these laws, first by transferring injury investigations to the International Trade Commission in 1954 and then by entrusting the dumping and subsidy investigations with the Commerce Department beginning in 1980.

With the bifurcated system that Congress has created to administer the antidumping and countervailing duty laws, central control must be lodged somewhere for the sake of over-all enforcement and accountability. The Commerce Department is the natural choice for this role, and the statute in broad terms seems to have so designated the Commerce Department. Perhaps this issue can best be addressed through a statutory amendment to establish the agencies' respective enforcement roles and through publication of new regulations by the Commerce Department and Customs Service to effect maximum coordination in their enforcement efforts.

Fourth, United States domestic industry should have a more prominent role to play throughout the enforcement process. As the petitioners in antidumping and countervailing duty cases, domestic producers have a real stake in enforcement and can contribute to enforcement. First, however, the enforcement process must become more open along the lines already considered. Through blue-line reports, data on collection of antidumping and countervailing duties by country and by foreign company should be available, with administrative protective order release to the domestic industry's counsel of company-specific data. Efforts to anticipate and thwart fraudulent circumvention should be undertaken through intensified physical inspection. These efforts should take place more in conjunction with the domestic industry, again through counsel where administrative protective order material is involved. Finally, the reports, instructions, and documents generated by the Commerce Department and Customs Service in their joint enforcement efforts should be made accessible, to the domestic industry generally where there is public information, and to the domestic industry's counsel under administrative protective order when there are confidential data.

In conclusion, the Council and its member companies over the last several years have made a substantial investment in successfully prosecuting fourteen antidumping and countervailing duty cases. With orders now in place, we are understandably anxious that the orders be effectively enforced, that all duties be collected, and that fraudulent circumvention be exposed. In working toward these goals, however, this domestic industry has discovered to its dismay that the Commerce Department and Customs Service appear to be ill-prepared in these regards. It is for this reason that we are pleased that these oversight hearings are being conducted and appreciative of the opportunity to express our views. The problem of enforcement in antidumping and countervailing duty proceedings is an important one. The comments and suggestions advanced here are meant constructively and intended to strengthen enforcement of the laws. Significant changes do seem indicated. We are hopeful that improvement in the enforcement system will result from this oversight process.

APPENDIX A

MEMBERS OF COPPER & BRASS FABRICATORS COUNCIL, INC.

1050 17th Street, N.W. - Suite 440
Washington, D.C. 20036

AMERICAN BRASS
70 Sayre St., P.O. Box 981
Buffalo, NY 14240

BRIDGEPORT BRASS CORPORATION
P.O. Box 51519
Indianapolis, IN 46251

CERRO COPPER PRODUCTS CO.
A Member of the Marmon Group of Companies
P.O. Box 681
East St. Louis, IL 62202

CERRO METAL PRODUCTS
A Division of the Marmon Group, Inc.
P.O. Box 388
Bellefonte, PA 16823

CHASE BRASS & COPPER COMPANY
P.O. Box 39548
Solon, OH 44139

CHICAGO EXTRUDED METALS CO.
1601 S. 54th Ave.
Cicero, IL 60650

EXTRUDED METALS
302 Ashfield St.
Belding, MI 48809

HALSTEAD METAL PRODUCTS, INC.
100 So. Elm St.
Suite 400
Greensboro, NC 27401

HEYCO METALS INC.
Stinson Dr., RD 9160
Reading, PA 19605

HUSSEY COPPER LTD.
Leetsdale, PA 15056

THE MILLER COMPANY
99 Center St.
Meriden, CT 06450

MUELLER BRASS COMPANY
1925 Lapeer Ave.
Port Huron, MI 48060

NEW ENGLAND BRASS COMPANY
Taunton, MA 02780

NORTH COAST BRASS & COPPER COMPANY
1121 East 200 60th Street
Euclid, OH 44132

OLIN CORPORATION-BRASS GROUP
East Alton, IL 62024

PLUME & ATWOOD
235 E. Main Street
Thomaston, CT 06787

REVERE COPPER PRODUCTS, INC.
P.O. Box 300
Rome, NY 13440

ULLRICH COPPER, INC.
2 Mark Road
Kenilworth, NJ 07033

WATERBURY ROLLING MILLS, INC.
P.O. Box 550
Waterbury, CT 06720

APPENDIX B

MAJOR PROCEDURES UNDER THE ANTIDUMPING AND COUNTERVAILING DUTY LAWS THAT REQUIRE COORDINATION AND SUPERVISION BETWEEN THE COMMERCE DEPARTMENT AND CUSTOMS SERVICE

- SUSPENSION OF LIQUIDATION
- POSTING OF A BOND, CASH DEPOSIT, OR OTHER SECURITY FOR ENTRIES OF MERCHANDISE WHOSE LIQUIDATION HAS BEEN SUSPENDED
- DETERMINATION OF CRITICAL CIRCUMSTANCES AND RESULTANT RETROACTIVE IMPOSITION OF SUSPENSION OF LIQUIDATION BY UP TO NINETY DAYS
- MONITORING OF AGREEMENT UNDER WHICH INVESTIGATION HAS BEEN SUSPENDED
- FINAL ASSESSMENT AND COLLECTION OF ANTIDUMPING AND COUNTERVAILING DUTIES
- IDENTIFICATION OF FOREIGN PRODUCERS AND EXPORTERS FOR PURPOSES OF BOTH ORIGINAL INVESTIGATIONS AND ADMINISTRATIVE REVIEWS
- MONITORING OF PERSISTENT INJURIOUS DUMPING FROM ADDITIONAL SUPPLIER COUNTRIES

Chairman PICKLE. Well, I thank you, Mr. Mayer, for a very strong statement, particularly when you say that Customs just simply hasn't proven their point of whether something is legally entered or illegally entered. They just don't have any judgment on it, but it is still coming in.

Do you suppose the new trade law will stop some of this?

Mr. MAYER. We don't believe that the new trade law will have great impact on what is occurring in our market.

Chairman PICKLE. Is Customs adjusted to these dumping cases now, or are you in an adversary position?

Mr. MAYER. I wouldn't call it an adversary position, they have been responsive to us. In fact, this book that I hold here is a record of some of the correspondence that has taken place between our Council and Customs Service and Commerce over the last 2 years to try and correct these matters.

We get a courteous hearing in all instances, but very little action.

Chairman PICKLE. Well, we thank you for your testimony. It is a good, strong statement.

Now, Mr. Cooperman, representing the Aluminum Recycling Association. Mr. Cooperman, if you will proceed.

STATEMENT OF RICHARD M. COOPERMAN, EXECUTIVE DIRECTOR, ALUMINUM RECYCLING ASSOCIATION, INC.

Mr. COOPERMAN. Thank you, Mr. Chairman, for holding these hearings. I appreciate the opportunity to appear this afternoon.

The ARA, Aluminum Recycling Association, represents more than half the production capacity of 36 companies located throughout the United States who produce specification aluminum ingot chiefly for the casting industry from aluminum scrap, excluding used beverage cans.

The industry represented by ARA was begun in the first decade of this century in plants in Chicago and Cleveland and today provides between 22 and 25 percent of all the aluminum consumed each year in the United States.

Aluminum based scrap, our raw material, is generated by industrial processes and by consumers. A modest quantity of scrap is imported. Aluminum scrap is about 85 percent of our industry's cost structure.

Sometimes aluminum scrap, usually from industrial sources, has an unusually high aluminum and alloy content. Rather than ship this type of scrap in bales or bundles or as separate chunks or pieces in railroad boxcars or trucks, it is remelted and poured into ingot form. Then it can be stacked and strapped and handled easily by forklift trucks. This scrap is called remelt scrap ingot, or RSI.

The substance of our problem is the Customs Service's identification of a form of aluminum scrap imported from the Soviet Union and its subsequent sale into the commerce of the United States as a different product of a higher value.

RSI, in its ingot form, is in the shape of a narrow rectangle notched at both ends and weighing about 50 pounds. It looks just like our product, specification aluminum ingot for the casting markets.

Over the past 2 years, the Soviet Union has been shipping RSI into the United States. ARA has provided the Customs Service with the names of many Soviet ships and the ports and dates of their arrival in the United States.

Small quantities of Soviet RSI have been examined and analyzed by a few of our companies. Although it is scrap, we have found Soviet RSI can resemble specification aluminum ingot alloy as produced by our companies in the United States. Where a broker handling Soviet RSI or a buyer using it in a casting production operation is not too careful or too particular about specifications for either raw material or product, Soviet RSI has been known to be used as aluminum alloy for production of castings.

I must add that the U.S. castings producers, which our industry serves generally, are widely and appropriately known for the specification integrity of their products. Our industry is aware that some Soviet RSI, after it has been classified by the Customs Service and entered the U.S., has been sold and bought as specification aluminum alloy.

We believe that material classified by the U.S. Customs as scrap should be sold as scrap and not as specification aluminum alloy. To sell it as specification alloy puts Soviet RSI in our markets as product and price competition. It is sold for specification aluminum alloy at prices below the market for this material.

Beginning in May 1987, we made all of this known to the Fraud Division of the Customs Service. We visited their offices here in Washington, DC, and representatives of the Customs Service spoke at the meeting of the association here in the capital.

We provided them with substantial information on entry of Soviet RSI into the United States at New Orleans, Baltimore, Charleston, Miami, New York, and other ports. We sent them reports of approximately 30 suspect shipments arriving at U.S. ports.

The Service undertook an investigation of the entries. Eventually or ultimately, they found confirmation of our allegations, and upon pressing the Service, we were informed that a sample of Soviet RSI landed at a United States port had been submitted by the Service to a laboratory in Baltimore. The laboratory found the material's chemistry matched an American Society of Testing Materials, ASTM, specification, B 37-60, which the Service erroneously labeled a scrap specification.

We were never permitted to see the laboratory report or to know the name of the laboratory. We asked Customs Service officials how we might proceed to respond to the erroneous ASTM designation, the entry of Soviet RSI as scrap, and its sale as aluminum specification alloy.

We were told in essence to write a Freedom of Information letter to obtain data from the Service. However, we did not know how to identify the laboratory by name or by date of its report or by title of investigation, and so we did not write an FOI letter.

It was also suggested by the Customs officials that we get an independent chemist or engineer to write a letter on ASTM B 37-60. We engaged Mr. Morton Levy to research ASTM B 37-60.

A copy of Mr. Levy's letter, which we have just submitted to the Customs Service, is attached to this testimony. In brief, it says that ASTM B 37-60—the number 60 standing for the year in which the specification was approved by ASTM—is out of date, has been revised twice since 1960, and is a specification for aluminum used for iron and steel manufacture and not for scrap.

Mr. Levy points out there is a specification for scrap designed ASTM 846-85. However, this specification is limited to aluminum scrap used in the steelmaking process. It is not for use in the nonferrous casting industry.

In summary, we are not certain quite how the Customs Service classifies Soviet RSI when it arrives at U.S. ports. If it is entered under the Tariff Schedules of the United States Annotated, TSUSA, as Item 618.10, aluminum waste and scrap, it appears the Column II duty is 16 percent ad valorem.

The fact that the Customs Service has labeled a laboratory report of a sample of this material as ASTM B 37-60 and called the material aluminum scrap would lead one to believe it is imported as TSUSA 618.10 and the importer of record has paid the duty.

However, to this day, Soviet RSI continues to be shipped into the United States; it is scrap; if classified by Customs as ASTM B 37-60, it is not scrap, but the Service says it is; and after entry, it is still being sold and bought by some manufacturers as specification alloy ingot.

We have interfaced with Customs Service officials on this as well as on many other matters. We have always found them to be zealous guardians of their interpretations of Customs rules and regulations. They are doing their job for this country.

Furthermore, it is one of the few agencies of our Government whose decisions may be challenged in a Federal court dedicated in part to reviewing Customs Service decisions. Budget and staffing circumstances undoubtedly add to this pressure.

The United States is operating with tariff schedules that have not been revisited or revised in over a quarter of a century. Our level of international trade today is many times greater and broader than it was in 1959 and 1961.

With the Harmonized System likely to be adopted next year by the United States; with the United States-Israel Free Trade Agreement in place and the strongest likelihood that the United States-Canada Free Trade Agreement soon will be in place; with trade negotiations going on between the United States and Mexico; and with public talk of a United States-Japan Free Trade Agreement, we probably have outdated our tariff schedules.

Mr. Chairman, may I suggest that among other solutions to the classification problem I have outlined, your committee may wish to consider legislation to cause a reexamination of the effects of our tariff schedules upon all our citizens, private, commercial and industrial, and upon our international trade policies.

Thank you.

[The statement of Mr. Cooperman follows:]

Testimony By

R.M. Cooperman, Executive Director

Aluminum Recycling Association, Inc.

My name is Richard M. Cooperman, Executive Director of the Aluminum Recycling Association, Inc., known as ARA, with offices here in Washington, D.C. I appreciate this opportunity to appear this morning.

The ARA represents more than half the production capacity of thirty-six companies located throughout the United States who produce specification aluminum ingot chiefly for the casting industry from aluminum scrap, excluding used beverage cans. Castings made from our product are in your automobiles, your homes, business machines like computers and calculators, in toys and sporting equipment, and in thousands of consumer and manufacturing equipment.

The industry represented by ARA was begun in the first decade of this century in plants in Chicago and Cleveland and today provides between 22% and 25% of all the aluminum consumed each year in the U.S.

First, let me say, the companies represented by ARA are not the big primary producers whose names are household words. While there are large companies in our industry, most of the 36 organizations are small businesses, many of them operated by their founders or first or second generations of the same family.

Aluminum based scrap, our raw material, is generated by industrial processes and by consumers. Usually it is gathered by scrap scavengers, scrap yards and scrap brokers. Some of our larger and mid-sized companies buy scrap directly from large industrial corporations, like aircraft manufacturers. A modest quantity of scrap is imported. Aluminum scrap is about 85% of our industry's cost structure.

Sometimes aluminum scrap, usually from industrial sources, has an unusually high aluminum and alloy content. Rather than ship this type of scrap in bales or bundles or as separate chunks or pieces in railroad boxcars or trucks, it is remelted and poured into ingot form. Then, it can be stacked and strapped and handled easily by fork lift trucks. This scrap is called remelt scrap ingot, or RSI.

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Small quantities of Soviet RSI have been examined and analyzed by a few of our companies. Although it is scrap, we have found Soviet RSI can resemble specification aluminum ingot alloy as produced by our companies in the United States. Where a broker handling Soviet RSI or a buyer using it in a casting production operation is not too careful or too particular about specifications for either raw material or product, Soviet RSI has been known to be used as aluminum alloy for production of castings. I must add that the U.S. castings producers, which our industry serves generally, are widely and appropriately known for the specification integrity of their products. Our industry is aware that some Soviet RSI, after it has been classified by the Customs Service and entered the U.S., has been sold and bought as specification aluminum alloy.

We believe that material classified by the U.S. Customs as scrap should be sold as scrap and not as specification aluminum alloy. To sell it as specification alloy puts Soviet RSI in our markets as product and price competition. It is sold for specification aluminum alloy at prices below the market for this material.

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We provided them with substantial information on entry of Soviet RSI into the U.S. at New Orleans, Baltimore, Charleston, Miami, New York, and other ports. We sent them reports of approximately thirty suspect shipments arriving at U.S. ports.

The Service undertook an investigation of the entries. Eventually or ultimately, they found confirmation of our allegations and upon pressing the Service, we were informed that a sample of Soviet RSI landed at a U.S. port had been submitted by the Service to a laboratory in Baltimore. The laboratory found the material's chemistry matched an American Society for Testing Materials (ASTM) specification, B 37-60, which the Service erroneously labeled a scrap specification.

ASTM is a classification system detailing chemistry and physical characteristics of most materials and is widely accepted around the world by industries and governments as a reliable numerical classification system.

ARA learned from ASTM and an ASTM Committee member from one of our member companies that ASTM B 37-60, assigned by the laboratory used by the Customs Service and labeled a scrap specification, did not apply to scrap but to finished ingot, rod or shot for use in iron and steel manufacture.

We were never permitted to see the laboratory report or to know the name of the laboratory. We asked Customs Service officials how we might proceed to respond to the erroneous ASTM designation, the entry of Soviet RSI as scrap, and its sale as aluminum specification alloy. We were told in essence to write a Freedom of Information (FOI) letter to obtain data from the Service. However, we did not know how to identify the laboratory by name or by date of its report or by title of investigation and so we did not write an FOI letter.

It was also suggested by the Customs officials that we get an independent chemist or engineer to write a letter on ASTM B 37-60. We engaged Mr. Morton Levy to research ASTM B 37-60.

A copy of Mr. Levy's letter, which we have just submitted to the Customs Service, is attached to this testimony. In brief, it says that ASTM B 37-60, (the number 60 standing for the year in which the specification was approved by ASTM) is out of date, has been revised twice since 1960, and is a specification for aluminum used for iron and steel manufacture and not for scrap. Mr. Levy points out there is a specification for scrap designated ASTM 846-85. However, this specification is limited to aluminum scrap used in the steel making process. It is not for use in the nonferrous casting industry.

In any event, notwithstanding any ASTM specification, when the Customs Service designates Soviet RSI as scrap, it should be sold as scrap and not as specification ingot in competition with our industry.

We also were told that it might be useful for ARA to hire an attorney to file a brief with the Customs Service on this subject. ARA found that to be too costly for its budget.

In summary, we are not certain quite how the Customs Service classifies Soviet RSI when it arrives at U.S. ports. If it is entered under the Tariff Schedules of the United States Annotated (TSUSA) as Item 618.10, aluminum waste and scrap, it appears the Column II duty is 16% ad valorem. The fact that the Customs Service has labeled a laboratory report of a sample of this material as ASTM B 37-60 and called the material aluminum scrap would lead one to believe it is imported as TSUSA 618.10 and the importer of record has paid the duty.

However, to this day, Soviet RSI continues to be shipped into the United States; it is scrap; if classified by Customs as ASTM B 37-60 it is not scrap but the Service says it is; and after entry, it is still being sold and bought by some manufacturers as specification alloy ingot.

We have interfaced with Customs Service officials on this as well as on many other matters. We have always found them to be zealous guardians of their interpretations of Customs rules and regulations. They are doing their job for this country. Furthermore, it is one of the few agencies of our government whose decisions may be challenged in a federal court dedicated in part to reviewing Customs Service decisions. Budget and staffing circumstances undoubtedly add to this pressure.

The United States is operating with tariff schedules that have not been revisited or revised in over a quarter of a century. Our level of international trade today is many times greater and broader than it was in 1959 and 1961. With the Harmonized System likely to be adopted next year by the U.S.; with the U.S.-Israel Free Trade Agreement in place and the strongest likelihood that the U.S.-Canada Free Trade Agreement soon will be in place; with trade negotiations going on between the U.S. and Mexico; and with public talk of a U.S.-Japan Free Trade Agreement, we probably have outdated our tariff schedules.

Mr. Chairman, may I suggest that among other solutions to the classification problem I have outlined, your Committee may wish to consider legislation to cause a reexamination of the effects of our tariff schedules upon all our citizens, private, commercial and industrial, and upon our international trade policies.

Thank you.

MORTON L. LEVY & CO.
23260 Shaker Blvd.
Shaker Hts., Ohio 44122
216-991-9323

CONSULTING CHEMICAL ENGINEER & CHEMIST

August 7, 1988

Aluminum Recycling Association
1000 16th St. N.W.
Washington, D.C., 20036

Attn: Mr. Richard Cooperman
Executive Director

Dear Mr. Cooperman:

You have asked for my opinion if ASTM Specification B-37 and its revisions apply to imported aluminum base ingot that is described as scrap on import documents, B/L's and manifests.

ASTM Spec. B-37 and its revisions are titled, "STANDARD SPECIFICATIONS FOR ALUMINUM FOR USE IN IRON AND STEEL MANUFACTURE". The first Standard, published in 1949, has been revised several times, the latest in 1985.

It is to be noted that ASTM assigned jurisdiction of B-37 to its committee B-7 on Light Metals and Alloys and is the DIRECT RESPONSIBILITY of subcommittee B-07.01 on ALUMINUM ALLOY INGOTS. ASTM B-37 does not apply to scrap, but to finished ingot, rod or shot, as stated in its title, ---"FOR USE IN IRON AND STEEL MANUFACTURE".

There is an ASTM specification, A 846-85, "STANDARD SPECIFICATION FOR ALUMINUM SCRAP FOR USE IN DEOXIDATION AND ALLOYING OF STEEL." Section 1. (Scope) of this Standard Specification states, "This specification covers aluminum and aluminum alloys in the form of PROCESSED SCRAP designated as shown in Table 1, for use in the manufacture of steel.

Specification A 846-85 is under the jurisdiction of ASTM Committee on Steel, Stainless Steel and Related Alloys and is the DIRECT RESPONSIBILITY of subcommittee A01.30 on Ferroalloys and Alloying Additives.

ASTM A 846-85 applies to ALUMINUM SCRAP for use in the manufacture of steel. The imported material referred to in the first paragraph of this letter is misrepresented as scrap, if it purports to be covered under ASTM B 37-60 and/or its revisions.

Very truly yours,

MORTON L. LEVY & CO.
Morton L. Levy
Morton L. Levy, P.E.
Registerd Chemical Engineer
Ohio Ser. No. E-013345

File ARA.2

Chairman PICKLE. Now, Mr. Bremer.

STATEMENT OF CHARLES V. BREMER, DIRECTOR, INTERNATIONAL TRADE, AMERICAN TEXTILE MANUFACTURERS INSTITUTE

Mr. BREMER. Thank you, Mr. Chairman, my name is Charles Bremer.

I appear today for the American Textile Manufacturers Institute, ATMI, the national association of the textile mill products industry. ATMI's member firms are engaged in every phase of textile manufacturing and processing and represent more than 80 percent of the total volume of the textile mill products industry and employ some 725,000 workers. It is on behalf of the textile industry that ATMI offers the following comments for the subcommittee's consideration.

As the members of the subcommittee are aware, the United States accepts an enormous volume of textile and textile-derived imports. Last year, these imports amounted to almost 14 billion square yards and $29 billion.

It is a fact that many of these imports entered our market fraudulently and illegally in violation of U.S. Customs law and regulations. Many of these fraudulent shipments also violated the international agreement which controls worldwide trade in textiles, the multifiber agreement, or MFA, as well as the many bilateral agreements which the United States has entered into under authority of the MFA.

The types of fraudulent and illegal activities which are carried out in textile importing are so numerous that to list them all would require most of the time allotted me today, so a list is appended to our written statement. Suffice it to say, however, that all of these activities involving Customs fraud are carried out with two purposes in mind: The evasion of import duties and the evasion of the restraints, that is, quotas, placed on textile imports.

One may debate the merits of the U.S. textile import control program—and considerable debate has and will continue to take place—but the fact is it exists, it exists in law and regulation, and both the exporters in foreign countries who are sending this $29 billion worth of merchandise to our market and the importers who are importing it are obliged to adhere to U.S. law and regulation. As far as evading import duties is concerned, here no debate is warranted; it is a felony, period.

As has been pointed out many times in congressional hearings and on other occasions, the textile industry and its workers have suffered greatly from the massive import flood that inundates our home market. To pile illegitimate and illegal imports on top of the burden represented by honestly traded goods is truly to add insult to injury.

Our first line of defense against dishonest imports is the U.S. Customs Service. In many respects, the Customs Service is our only line of defense. ATMI and the entire textile industry have the greatest regard and appreciation for Customs' efforts in this area.

Customs' task in enforcing our laws and the terms and conditions of our textile import control program is a nearly impossible one, made so by the sheer magnitude of these imports and the countless subversions, circumventions, and scams which have been dreamt up to evade the law, and the limited resources which the Customs Service has to devote to the problem.

While our industry is supportive of Customs' efforts in policing textile and apparel imports, we realize that there are many who are not. Many importers have accused the Customs Service of being overzealous in its enforcement procedures and of being arbitrary, capricious and heavyhanded. I daresay that the last drunk driver stopped on Interstate 95 thought that the Maryland State Police were being overzealous and heavyhanded.

While I am sure, Mr. Chairman, that there may be instances of improper or unwarranted seizures by Customs or the improper application of a Customs regulation, it is nonetheless unfair to paint the entire Service with such a heavy brush.

In carrying out its commercial operations functions, the Customs Service is merely enforcing the law and enforcing the law is, by its very nature, an intrusive and bothersome thing. Every day, we are all inconvenienced to one degree or another by the application of the law by one or another Federal or local jurisdiction. It is the price that honest citizens pay so that the dishonest among us can be apprehended and punished.

For their part, ATMI and its members believe that Customs enforcement is not strict enough. Untold millions of dollars worth of merchandise enters our market in violation or circumvention of the law. Such illicit trade not only cheats the Federal Treasury of revenue, it gives the dishonest importer an unfair advantage over his honest competitor and, of greater concern to ATMI, greatly injured American firms and workers.

While the interests of our industry and the importing community are divergent, to say the least, we can agree, for different reasons, that there are problems with the Customs Service's commercial operations. And we agree, I believe, on the solution: The allocation of greater resources to the problem.

Mr. Chairman, it is a plain fact that with over 950,000 separate entries annually for textile and textile-related products through 274 ports, covering over 2,100 separate tariff lines, the Service is simply overwhelmed. Let us remember also that while the physical volume of textile imports has more than doubled during the past 5 years, Customs resources devoted to textile imports have not.

The solution, therefore, is for the Customs Service, either at the direction of Congress or on its own initiative, to add more inspectors, more special agents, more import specialists and more auditors to its staff, and to devote this additional staff to monitoring textile imports.

Such an expansion of Customs resources is quite affordable, since the duties currently collected on textile and apparel imports produce a revenue stream of $4.3 billion and the additional duties collected by the elimination of fraud would, even by the most conservative estimate, add $100 million to this total.

In other words, Mr. Chairman, such a program of enhanced enforcement would not only benefit domestic industry, which is entitled to the full protection of the law, but serve as well to enhance the competitiveness of honest traders and produce an outstanding return on investment for the Government. Everyone wins, except the crooks.

In closing, Mr. Chairman, let me note that, in response to the many concerns that have been raised in connection with Customs' commercial operations, one thing that should not be done is to reduce Customs' monitoring and enforcement efforts, either through automation or the elimination of the documentation—here read that much-dreaded word paperwork—accompanying textile imports.

It may be all well and good to have importers and brokers make electronic entry of imports of toys or televisions or wine and have these entries automatically liquidated and sent on their way into U.S. commerce, but this must not happen to textiles. The word bypass ought never to be used in conjunction with textile imports.

It is axiomatic that the existence of the textile import control program and its attendant quotas create a powerful, for some, an irresistible incentive to cheat. Anything that would eliminate or even reduce the "hands-on" involvement of Customs personnel in reviewing, inspecting and auditing textile imports and their accompanying documentation is an open invitation for the cheats and the crooks to commit fraud on a scale heretofore unimagined.

Let me reiterate, Mr. Chairman, ATMI's high regard for the job being done by the Customs Service, our understanding of the enormity of the task confronting it and our hope that all affected and interested parties can work with Customs to strengthen and improve its commercial operations.

For our part, ATMI and its member firms and other industry associations have helped to provide training for Customs personnel and have worked with Customs to simplify textile nomenclature and classification procedures under the Harmonized System.

We look forward to continuing these sorts of cooperative ventures in the future. Thank you, Mr. Chairman, for the opportunity to comment on behalf of our industry on a matter of very great importance to us.

Chairman PICKLE. Thank you for your statement.

[The statement of Mr. Bremer follows:]

STATEMENT OF THE AMERICAN TEXTILE MANUFACTURERS INSTITUTE (ATMI)

The statement is submitted on behalf of the member firms of the American Textile Manufacturers Institute (ATMI). ATMI's member firms are engaged in every phase of textile manufacturing, processing and marketing and account for more than eighty percent of the volume of domestic textile mill products industry. The industry currently employs 725,000 workers, all of whom are affected by the subject of the Subcommittee on Oversight's current investigation: the commercial operations of the U.S. Customs Service.

The American textile industry and its workers have been injured by the spectacular growth in textile and apparel imports in recent years. During 1987, these imports amounted to 13.6 billion square yard equivalents and $28.9 billion. Much of these imports as well as much that was not counted and therefore is not included in the above totals was entered into our domestic market illegally and fraudulently, in violation of U.S. law and the international agreement which governs worldwide trade in textiles(1) and the United States' many bilateral textile trade agreements.

Textile import fraud is a long standing, widespread and pervasive phenomenon. The many types of fraudulent and illegal practices which are found in U.S. textile trade are enumerated in Exhibit A, attached. As the exhibit shows, all these activities are carried out with two purposes in mind: the evasion of import duties and the evasion of the restrains (i.e. quotas) placed on textile imports.

While there has been and will continue to be considerable debate regarding the merits of the textile import control program - which the domestic industry avers is essential to its continued survival - the fact remains that the program exists. It exists in law and in regulation and both exporters in foreign countries and their American customers are obliged to adhere to U.S. law and regulation, just like anyone else. As far as evading import duties is concerned, the issue is more clear cut .... it is a felony.

America's first line of defense against illegal or fraudulent imports and the economic harm they cause is the U.S. Customs Service. In many respects the Customs Service is the only line of defense. ATMI and the entire textile industry have the greatest regard and appreciation for Customs' efforts in this area. We recognize also that Customs' task in enforcing U.S. law and the terms and conditions of our many bilateral agreements is a nearly impossible one, made so by the sheer magnitude of these imports, the number of foreign suppliers - over 150 - shipping textile goods to our market, the many subversions, circumventions, and scams which have been dreamt up to evade the law (refer to Exhibit A) and the limited resources which the Customs Service has to devote to the problem.

While the textile industry and allied industries - fiber producers, apparel manufacturers, etc - are supportive of Customs' efforts in policing textile and apparel imports, there are those who are not. Many importers and brokers have accused the Customs Service of being "overzealous" in its enforcement procedures and of being "arbitrary", "capricious" and "heavyhanded". While there are, no doubt, instances of improper or unwarranted seizures by Customs or the improper application of Customs regulations, these incidents are the exception rather than the rule and it is simply unfair - as well as disingenuous - to imply or infer that these are routine occurrences. If the Customs Service were as great an impediment to the flow of textile imports as has been claimed, fourteen billion square yards' worth would not have crossed our border last year. These complaints also ignore the fact that, in carrying out its commercial operations functions, the Customs Service is merely enforcing the law and enforcing the law is, by its very nature, an intrusive and bothersome thing. Every day every citizen is inconvenienced to one degree or another by one or another local or federal law enforcement agency. It is the price which honest citizens pay so that the dishonest ones can be deterred or apprehended.

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(1) Arrangement Regarding International Trade In Textiles, known also as the Multifiber Arrangement or MFA.

Despite the vociferous complaints about Customs enforcement, ATMI and its member firms believe that Customs enforcement is not strict enough. Untold millions of dollars worth of merchandise enters our market in violation or circumvention of the law. Such illicit trade not only cheats the federal treasury of revenue, it gives the dishonest importer an unfair advantage over his honest competitor and, of greater concern to ATMI, injures American firms and workers.

While the interest of the textile industry and the importing community are divergent more often than not, both agree, for different reasons, that there are problems with the Customs Service's commercial operations. And we agree, ATMI believes, on the solution: the allocation of greater resources to the problem. It is an undeniable fact that with over 950,000 separate entries annually covering over 2,100 individual tariff lines through 274 ports, the Service is simply overwhelmed. It should be remembered also that while the physical volume of textile imports has more than doubled during just the past five years, Customs resources devoted to textile imports have not.

The solution, therefore, is for the Customs Service, either at the direction of Congress or on its own initiative, to add more inspectors, more special agents, more import specialists and more auditors to its staff and to see that they all receive proper training and to devote this additional staff to imports of textile and other controlled products. Such an expansion of essential resources is quite affordable since the duties currently collected (year 1987) on textile and apparel imports produce a revenue stream of $4.3 billion and the additional duties collected by the elimination of fraud would, even by the most conservative estimate, add $100 million to this total. Such a program of enhancement would not only benefit domestic industry, which is entitled to the full protection of the law, but serve as well to enhance the competitiveness of honest traders and produce an outstanding return to the government.

That there is repeated Customs fraud and violation of our textile import control program is a well-known fact. Whether it Pakistani exporters transshipping towels through Bangladesh to avoid quotas, knit shirts from Taiwan labeled as bamboo garden rakes or the commercial papers accompanying 500,000 lbs of fabric luggage declaring a weight of only 200,000 lbs, thousands of violations occur every year. No one knows how many more go undetected, but the fact that only a fraction of all textile shipments are examined by Customs leads to the hypothesis that the final total is staggering.

The need for additional Customs staff is also necessitated by the phenomenon of "port shopping". This is the practice of diverting merchandise from its first port of call in the U.S., where it might ordinarily be expected to be cleared for entry, to another, distant port which has no textile import specialists or inspectors or auditors experienced in textiles. It is interesting - and quite frustrating to the domestic industry - to review the data showing textile imports from Asia being entered in ports hundreds - or even thousands - of miles from the nearest ocean.

In seeking ways to improve the Customs Service's commercial operations, one of the options which should not be considered is the reduction of Customs' inspection and monitoring activities either through automation or elimination of the documentation accompanying textile imports. It may be perfectly satisfactory, and probably even desirable, to permit electronic entry and automatic liquidation of imports of toys or televisions or tea bags, but this must not happen to textile imports. The "Bypass" system of clearing imports ought not even to be considered in connection with textiles and apparel. It is axiomatic that the existence of the textile import control program and its attendant quotas create a powerful - for some, irresistible - incentive to cheat. Anything that would eliminate or even reduce the "hands on" involvement of Customs personnel in reviewing, inspecting and auditing textile imports and their accompanying documentation is an open invitation to commit fraud on a scale heretofore unimagined.

For its part, the domestic industry, through associations such as ATMI and their member firms, have helped provide training for Customs personnel and have worked with the Customs Service and other agencies of jurisdiction to streamline textile nomenclature and classification procedures under the Harmonized System. We look forward to continuing these sorts of cooperative ventures in the future. Anything that can help the Customs Service perform its awesome task more efficiently and more thoroughly is worth doing, and ATMI stands ready to work with all concerned parties to achieve these ends.

EXHIBIT A

TYPES OF TEXTILE IMPORT FRAUD

FRAUD	TO EVADE
- False declaration of unit value	duties
- False declaration of quantity	duties & quotas
- Incorrect description of goods	duties & quotas
- False declaration of fiber content and/or relative values of fibers in blends	duties & quotas
- False declaration of country of origin (transshipment)	quotas
- Break-up of bulk shipment into individual shipments valued at less than $250	quotas
- False declaration of origin of component parts of articles entered under TSUS 807.00	duties
- False declaration of origin of component parts of articles entered under TSUS 807.0010	quotas
- Invalid or unauthorized (foreign country) visa	quotas
- False declaration of type and/or degree of intermediate processing in order to claim substantial transformation	quotas
- False declaration of origin to avoid Column 2 duties	duties
- False declaration of unit value to avoid countervailing duty or dumping margin	duties

Chairman **Pickle**. Now, Mr. Chenoweth, who represents the American Iron and Steel Institute's Customs Liaison Task Force.

STATEMENT OF JAMES W. CHENOWETH, CHAIRMAN, CUSTOMS LIAISON TASK FORCE, AMERICAN IRON & STEEL INSTITUTE, AND DIRECTOR, CORPORATE AFFAIRS, LONE STAR STEEL CO.

Mr. **Chenoweth**. Thank you.

I am Jim Chenoweth, director of corporate affairs for Lone Star Steel Co., and I am here today as chairman of the American Iron & Steel Institute's Customs Liaison Task Force. With me is Dave Phelps of the AISA.

As a result of the President's steel program, Treasury officials invited members of my task force to visit major steel ports to review staffing levels and procedures. We visited 10 major steel ports and the Customs computer center in Virginia, and discussed our findings at two meetings with senior Treasury and Customs officials. The following are the principal findings and comments from our 1985 and 1986 port visits:

One, at every port we visited, we were impressed by the dedication and professionalism of the Customs Service employees. And yet, at nearly every port we visited, as a result of understaffing, the inspections were at levels so low that unscrupulous importers had virtually no risk of being caught. Imports were cleared without ever looking at the imported steel, much less counting, or weighting, or checking dimensions or grade.

Two, we believe that Customs management should get high marks for procuring mobile laboratory testing equipment which, in effect, takes the lab to the dock, tests the steel on the spot, instantly detecting misclassified steel products and turning a healthy profit for the Service.

Three, an important development project in Customs involves the Automated Commercial System, ACS. Our principal concern with ACS was that this system would bypass the imports specialists and their expertise, thus reducing the effectiveness of Customs commercial enforcement activities. In critiquing the ACS, we stated our strong support for Customs computerization efforts. However, we strongly voiced our opinion that a bigger and better computer system could not replace enforcement people.

These were our principal findings during the initial stages of the President's program. Since then, however, Customs management has implemented many of the suggestions we made, such as increasing commercial enforcement personnel in some key steel ports. In addition, the ACS will soon include the import specialists on an online basis. As recently as yesterday, we learned that 250 PCs are in fact being delivered today, or are being delivered now to import specialists so that they will have access to the ACS right there on their desk, and at the same time will be able to use them on activities in their port.

Also there is underway a setup for training for the import specialists at Glynco, Ga. So that they will, in fact, have the capability to instantly access the ACS, and also to check documents that will be entered by the Customs brokers.

The enforcement orientation of Customs personnel has resulted in a highly effective system for monitoring VRA imports. This system has included the use of mobile metal analyzers, mobile steel weight checking equipment, the ACS, and first-class vigilance on the part of inspectors, import specialists, and laboratory personnel. Customs management has, in the last 2 to 3 years, been highly supportive and encouraging of steel enforcement activities. They deserve high marks for their work, also.

While Customs has made great strides in improving steel enforcement activities, more remains to be done. Customs should continue increasing commercial enforcement personnel to levels which reflect the demands placed on them by the importing community and domestic industries, and upgrade the critical ACS. With the new personnel, continuing improvements in computerization, along with the management and line personnel already on the job, Customs could improve its ability to stop commercial fraud in steel trade even more.

Thank you.

[The statement of Mr. Chenoweth follows:]

Testimony of James W. Chenoweth on
Inspection and Clearance of Steel Imports by the
U.S. Customs Service
before the
Oversight Subcommittee of Ways and Means

My name is James Chenoweth. I am Director of Corporate Affairs for Lone Star Steel Company, and am here today as Chairman of the American Iron and Steel Institute's Customs Liaison Task Force.

As a result of the President's Steel Program, Treasury officials invited members of my task force to visit major steel ports to review staffing levels and procedures. We visited ten major steel ports and the Customs computer center in Virginia and discussed our findings at two meetings with senior Treasury and Customs officials. The following are the principle findings and comments from our 1985 and 1986 port visits.

1. At every port we visited, we were impressed by the dedication and professionalism of the Customs Service employees. And yet at nearly every port we visited, as a result of understaffing, inspections were at levels so low that unscrupulous importers had virtually no risk of being caught -- imports were cleared without ever looking at the imported steel much less counting, or weighing, or checking dimensions or grade. We recommended an increase in the number of inspections by adding inspectors and mandating that Customs increase substantially the number of inspections of high risk cargo, such as steel.

2. We believe that Customs management should get high marks for procuring mobile laboratory testing equipment which, in effect, takes the lab to the dock, tests the steel on the spot, instantly detecting misclassified steel products and turning a healthy profit for the Service. We recommended that Customs increase the number of mobile labs, greatly increase the frequency of their visits to each port and maintain the number of fixed labs at the current level.

3. An important development project in Customs involves the Automated Commercial System (ACS). Our principal concern with ACS was that this automated broker interface system would bypass the imports specialists and their expertise, thus reducing the effectiveness of Customs commercial enforcement activities. We recommended that Customs integrate the imports specialists fully into the ACS. In critiquing the ACS, we stated our strong support for Customs computerization efforts. However, we strongly voiced our opinion that a bigger and better computer system could not replace enforcement people.

These were our principle findings during the initial stages of the President's Program. Since then Customs management has implemented many of the suggestions we made, such as increasing commercial enforcement personnel in key steel ports. In addition, the ACS will soon include the import specialists on an on-line basis -- a major improvement as far as steel enforcement activities are concerned.

The enforcement orientation of customs personnel has resulted in a highly effective system for monitoring VRA imports. This system has included the use of mobile metal analyzers, mobile steel weight checking equipment, the ACS, and first class vigilance on the part of inspectors, import specialists, and laboratory personnel. Customs management has, in the last two to three years, been highly supportive and encouraging of steel enforcement activities. They deserve high marks for their work also.

While Customs has made great strides in improving steel enforcement activities, more remains to be done. Customs should continue increasing commercial enforcement personnel to levels which reflect the demands placed on them by the importing community and domestic industries, and upgrade the critical ACS. With the new personnel, continuing improvements in computerization, along with the management and line personnel already on the job, Customs could inprove its ability to stop commercial fraud in steel trade even more.

Chairman PICKLE. Thank you, Mr. Chenoweth.

And I want to thank you and all the panelists. It has been a good panel. Of course, you are steel and brass and textiles. But you are representatives of importers into this country, and I can see the difficulties you are facing here.

Mr. Chenoweth, I notice that you complained about some of the steel products coming in illegally, and I read recently where an economist in an article indicated that East Germany was successful in bringing steel in this country through the European Community. Are you familiar with that operation in that case? Is it still going on, or do you know?

Mr. CHENOWETH. What I am familiar with, Mr. Pickle, is something similar to that; however, I think it is the reverse. As I understand it, well, as you know, the voluntary restraint agreements cover practically all of the European countries, Eastern European countries—I am sorry, Western European countries.

The steel products that are to be shipped from Germany, France, Spain, all of the European countries, are covered by VRAs. Turkey, for instance, is not covered. And therefore, there would be a very potential hazard to take a steel product from one of the countries that are under a VRA, transship it to Turkey and then ship it from Turkey to the United States, and there would be a way to divert, if you please.

Chairman PICKLE. Is port shopping a common difficulty that you have in importing your products?

Mr. CHENOWETH. Absolutely.

Chairman PICKLE. And that is true of everyone who has testified here this morning, if they can't get it through one port, they will get it through another, even if it is 1,000 miles out of their way?

Mr. BREMER. Sometimes 3,000 miles, Mr. Chairman.

Chairman PICKLE. And we need more inspectors? That seems to be a common complaint of all of you.

Mr. CHENOWETH. One of the things that we would suggest, or particularly for our—in our interest, I mentioned the mobile metal analyzers, the MMAs. This is a van. And in the van, there is spectrographic equipment and other equipment that you can go right down to the dock and check the steel, rather than going through an almost impossible process of trying to cut a sample.

Chairman PICKLE. The MMA procedure, is that a good one, accurate and reliable?

Mr. CHENOWETH. Yes, it is, it will hold up in court.

Chairman PICKLE. It is in operation in most of the ports?

Mr. CHENOWETH. There are only five of them at the present time. But in regard to the subject of port shopping, the MMA being a mobile lab, it has the ability to show up at any port at any time, and because of that, the importer never knows when he is going to be confronted with that MMA. And so, it does discourage port shopping to a great degree.

Chairman PICKLE. Well, Mr. Chenoweth, can you give me a ballpark figure for the percentage of all steel products arriving at major ports which do receive complete and thorough inspection? What percentage of steel imports is actually inspected?

Mr. CHENOWETH. It would be less than 5 percent, closer to 1. But I would tell you that we ought not to be relating that to a possible

100 percent inspection. I wouldn't recommend or make that sort of a claim. You should not expect to go on a 100-percent basis.

But I would tell you that in many cases, there is repetitive shipments by the same importers, by the same Customs brokers, and over a long time period, have proven to be upright, honest and continuing to do the right thing and to never, to never be in question.

A 5-percent spot check on people like that would certainly be satisfactory and I think a good use of the taxpayer's money. I think now that there must be this knowledge of the other type of importer who is looking for a way to make a quick break, and I think that in those cases, there ought to be enough personnel to inspect those types of importers up to 100 percent level.

Chairman PICKLE. Well, we wouldn't expect 100 percent inspection, but even though it is a low percentage, I am trying to ask myself, is that an appropriate amount? Do we need more inspections or less inspections, or is that a good percentage?

Mr. CHENOWETH. I would tell you—I would say we need more inspectors. I will always tell you that, and I would tell you one of the things that we found, though, that I would offer as a quick solution, what we saw was a lot of import specialists and inspectors doing clerical work, and here are experts that are tied up doing things that a person with half the knowledge and half the expense could do, and so, if there were attention put on adding clerical help to these inspectors and import specialists, I think that that would make a quick relief, give us quick relief.

Chairman PICKLE. All right.

Mr. Schulze, do you have any questions?

Mr. SCHULZE. Yes, I thank you, Mr. Chairman, and I thank the panel. This has been interesting to me over the years, and you have expressed many of my concerns. I appreciate very much the testimony and the way you have documented the testimony.

Let me also say to you that as time goes on, if you have other cases which come to your attention, let us know. Mr. Cooperman had you had a member of the Trade Subcommittee involved with your issue as you went along, you might have gotten a little more rapid response from the bureaucracy. I am not criticizing your attorneys and what they are doing, but keep us informed of your actions by sending us letters and that sort of thing, because it might help the cause.

Mr. COOPERMAN. Thank you, Mr. Chairman.

Mr. SCHULZE. It seems to me that textiles and sometimes steel, are shipped sometimes in containers by tractor-trailers where the access ports make it difficult to completely check out the containers and the contents.

Would designated openings, whether they be doors or access panels in containers, be of any help? I think not only with steel but perhaps textiles as well, it would make a difference. Are there other inspection methods which we should consider—relatively simple methods? I view this as a relatively nontechnical simple method that would facilitate Customs addressing some of these problems

Mr. Chenoweth or Mr. Bremer, do you want to respond?

Mr. BREMER. I will respond by saying, yes, that would be a step in the right direction, to have the containers more accessible by

Customs personnel and I would go further to say another assistance in this situation would be to have a limited number of ports of entry for textile products.

As I mentioned earlier in my remarks, there are 274 textile posts now. This is indicative of port shopping on a grand scale. There is no reason for a fabric from Korea to enter this country though Ogden, Utah, except there is no import specialist there.

Mr. CHENOWETH. One of the ports we visited, there was a very, very large volume of container imports at that point. We were told that they were not able to inspect, actually open up the containers and look to see what was there.

Again, if you open the door, here is a wall of merchandise looking you in the face, and you have no idea what is behind it. Therefore, it requires literally breaking down—

Chairman PICKLE. Why did they tell you it couldn't be inspected or couldn't be seen?

Mr. CHENOWETH. It takes too much time to do it, and there is no personnel. As of that time, they were inspecting less than 1 percent of the containers, but that of the containers they did inspect, they were having a hit record of 65 percent.

Mr. SCHULZE. Mr. Bremer, with all of the advances in technology and with the various resonance scanners we have developed in the medical field with sonic waves and so forth, is there a method whereby a load of textiles could be inspected for contraband, No. 1, and No. 2, for content?

Mr. BREMER. I expect in terms of trying to determine the content of the container, yes, perhaps those techniques could be used but it is not merely understating or overstating the contents of the container that describes the many kinds of textile fraud. It is more likely to be an understatement of the actual value of the merchandise; also transshipments are a very serious problem and bills of lading would say this came from Hong Kong when it came from China, et cetera.

Inspection is a very difficult job because everybody knows that you put the contraband or the falsely declared merchandise, the stuff you are trying to sneak in, in the back of the container and at many ports, such as LA for example, where there is a great need and desire to expedite the flow of merchandise through the port in a timely fashion, inspectors don't have time to get to the back of the container and if they try to look for the merchandise, they have to go through 36 feet of polyethylene bags on which the merchandise is hanging and they will be smothered by the time they get back to the back which is where it is located.

Mr. SCHULZE. That is why I ask about the additional ports which could be opened at the desire of the inspection officer.

Mr. BREMER. That would be very helpful.

Mr. SCHULZE. If any of you have any suggestions on a design or location of such ports, we would appreciate having those, as well.

Gentlemen, I have many more questions but the hour is late and we have another hearing coming and we have a bill on the floor. So I appreciate your taking time to come and keep us informed of your problems. Let's try to work together to solve them.

Chairman Pickle. Thank you, Mr. Schulze. I thank the panel. This committee does have a bill on the floor now and we expect action on that vote in a few minutes.

We are going to conclude the hearing. If you have any additional statements or comments to make, we will be glad to receive them and in turn we will be submitting questions for you for direct response.

In the interest of time, we can't ask all the questions we wanted to. We appreciate your report about your task force, Mr. Chenoweth. It is very interesting and helpful. The committee is adjourned.

[Whereupon, at 1:04 p.m., the subcommittee was adjourned.]

REVIEW OF U.S. CUSTOMS SERVICE OPERATIONS

TUESDAY, SEPTEMBER 27, 1988

House of Representatives,
Committee on Ways and Means,
Subcommittee on Oversight,
Washington, DC.

The subcommittee met pursuant to call at 9 a.m., in room 1100, Longworth House Office Building, Hon. J.J. Pickle (chairman of the subcommittee) presiding.

[The press release announcing the hearing follows:]

FOR IMMEDIATE RELEASE
TUESDAY, SEPTEMBER 13, 1988

PRESS RELEASE #27
SUBCOMMITTEE ON OVERSIGHT
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
1105 LONGWORTH HOUSE OFFICE BLDG.
WASHINGTON, D.C. 20515
TELEPHONE: (202) 225-5522

THE HONORABLE J. J. PICKLE (D., TEXAS), CHAIRMAN, SUBCOMMITTEE ON OVERSIGHT, COMMITTEE ON WAYS AND MEANS, U.S. HOUSE OF REPRESENTATIVES, ANNOUNCES THE THIRD IN A SERIES OF HEARINGS TO REVIEW U.S. CUSTOMS SERVICE OPERATIONS

The Honorable J. J. Pickle (D., Texas), Chairman of the Subcommittee on Oversight, Committee on Ways and Means, U.S. House of Representatives, announced today that the Subcommittee will hold a hearing on Tuesday, September 27, 1988, to receive testimony from the U.S. Customs Service Commissioner William von Raab, and other Customs officials concerning Customs operation and activities. The hearing will be held in the main Committee hearing room, 1100 Longworth House Office Building, beginning at 9:00 a.m.

The Subcommittee hearing is the third in a series of investigative hearings on the U.S. Customs Service (Customs). The hearing will provide an opportunity for the Subcommittee to review directly with the Customs Commissioner specific issues and concerns about Customs' commercial operations and administration of the trade laws at the borders, including the use of discretionary authority, implementation of automated systems, and the consequences to the importing community of inadequate and non-uniform services. The hearing will also address specific issues identified during the course of the Subcommittee's yearlong investigation of Customs, and concerns raised by witnesses testifying at prior Subcommittee hearings.

In announcing the hearing, Chairman Pickle stated: "I look forward to receiving the testimony of Customs Commissioner von Raab concerning Customs' commercial operations. It is important that the Subcommittee continue to monitor Customs, on an ongoing basis, to insure Congressional oversight of the agency and examination of problems brought to the attention of the Committee on Ways and Means.

"The initial phase of the Subcommittee's review of Customs included Subcommittee hearings, site visits to Customs facilities, and staff investigation. This oversight activity has resulted in serious questions being raised about various aspects of Customs' activities. I intend to question the Commissioner and other Customs officials about a broad range of topics, including the reports and issues raised by witnesses who appeared before the Subcommittee."

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Those wishing to submit written comments for the printed record of the hearings should submit six (6) copies by the close of business, Friday, October 28, 1988, to Robert J. Leonard, Chief Counsel, Committee on Ways and Means, U.S. House of Representatives, room 1102 Longworth House Office Building, Washington, D.C. 20515.

SEE FORMATTING REQUIREMENTS BELOW:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be typed in single space on legal-size paper and may not exceed a total of 10 pages.
2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.
3. Statements must contain the name and capacity in which the witness will appear or, for written comments, the name and capacity of the person submitting the statement, as well as any clients or persons, or any organization for whom the witness appears or for whom the statement is submitted.
4. A supplemental sheet must accompany each statement listing the name, full address, a telephone number where the witness or the designated representative may be reached and a topical outline or summary of the comments and recommendations in the full statement. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press and public during the course of a public hearing, may be submitted in other forms.

Chairman **Pickle**. I am going to ask the subcommittee to please come to order in order that we may proceed.

The Subcommittee on Oversight began its oversight investigation of the U.S. Customs Service over a year ago. We have received hours of testimony and a room full of documentation concerning the operations of Customs.

Today's hearing is one which all of us have been looking forward to. Today is the subcommittee's first opportunity to discuss the results of our review to date, and to explore some of our preliminary findings with the Customs Commissioner, the Honorable William von Raab.

Customs is one of the most important and powerful agencies within the jurisdiction of the Committee on Ways and Means. It is important that this subcommittee continue to monitor Customs activities, over the next several years, to insure that the agency is taking a balanced, effective, and fair approach in enforcing our trade laws and dealing with the public.

Overall, I believe that the Customs Service deserves to be congratulated for a good job. The responsibilities of Customs are great. A well-managed Customs Service is critical to the internal safety of this country and to the free flow of commerce into and out of our borders.

This subcommittee's investigation has raised several serious problem areas which merit our attention and discussion today. As we proceed, we all need to remember that the goal of the subcommittee's investigation and hearings is to insure that an appropriate balance is reached between our enforcement concerns and the concerns of the trade community.

They are not sensational or tricky. They are examples that have been brought to our attention. I welcome Commissioner von Raab here this morning.

I have concluded that the Customs Service operates, by and large, with a free hand—much as a "Lone Ranger." Over the past decade, Customs has not been monitored closely by either this committee nor the Department of Treasury. This is not a healthy way for the Federal Government to run a very powerful and important agency. I have often said that Customs has grown "accustomed" to making its own decisions without question.

Importantly, it seems that Customs has grown somewhat insensitive to the concerns of the trade community. Much of the questioning today will focus on this issue. While we all applaud the commissioner for his aggressive enforcement efforts, particularly in the area of drug interdiction, we must also carefully consider whether the legitimate concerns of the domestic trade community are being properly addressed by Customs.

We have submitted many questions to the Commissioner and his agency so that they would know what our concerns are and what the problem we have before us will be that we want to discuss. We have tried to give you full information from our standpoint.

We expect the same response from you. I hope this spirit of cooperation can be translated to the field, that this subcommittee proceeds, and this is reviewed. There is no reason for Customs personnel to be reluctant to talk to our subcommittee and simply there is no reason why the private sector should hesitate to come forward to this committee.

I hope that the Commissioner would personally send this message to all those who might be concerned or affected. Now, we have got a long day ahead of us. I wanted to proceed, first, with the commissioner's testimony, after members have made their opening statements.

Then I want to ask each member as they proceed to be as considerate of the time as possible. We are scheduled out of this room by 2 o'clock. We have a standby room available, if that is necessary, if we haven't concluded by that time.

We are not going to limit each Member to 5 minutes as normally would be the case. Each member would be allowed more time than that, but we want you to keep the time element in mind. Now, before we recognize the commissioner, let me ask Mr. Schulze if he has an opening statement he wants to make.

Mr. SCHULZE. Mr. Chairman, I do. Thank you.

I join you in welcoming Commissioner von Raab to the subcommittee this morning. The Customs Service is one of the oldest agencies in the United States and is extremely important in the enforcement of our nation's trade laws.

The mission of the Customs Service often appears to range between two extremes. On one hand we see it as being engaged in a dangerous high profile anti-drug smuggling operation. On the other hand, some view it as a bureaucratic paper mill engaged in the somewhat ponderous administration of the flow of international trade.

The subcommittee held 2 days of extensive hearings on the commercial operations of the Customs Service. You have heard a number of witnesses describe their first-hand experience with the agency. I regret that much of the testimony we received described an insensitive, inconsistent sort of nit-picking type operation.

The message that came through all too often seemed to be that the tough-minded attitude that we might expect to see associated with criminal interdiction operations has somehow colored the attitude of those involved in the commercial operations.

That is troubling. It is troubling because that type of attitude can have the effect of erecting arbitrary trade barriers which have never been legislated. That is not a power which Congress has delegated to the Customs Service. While the general public is inconvenienced to some degree by the Customs Service, the brunt of the problems affect businesses which are engaged in the flow of international commerce.

Quite frankly, there would be a grass roots revolution if the average state motor vehicle office ran its driver's license renewal program the way we have heard the Customs Service may be running its commercial operations. Perhaps we haven't seen that happen yet, because the problems we are hearing about are of a nature that the affected businesses have tended to suffer in silence and absorb losses as the cost of doing business.

This may be a pragmatic approach, but it is just plain wrong for an agency of the Federal Government to impose that kind of burden on those in this country who are key participants in the global economy. Mr. Chairman, earlier witnesses have had the opportunity to present testimony which was critical of the Customs Service commercial operations.

Today the Customs Service will have its own opportunity for rebuttal and to present what I am sure will be another side of the story. Hopefully today's hearing will help to dispell any unfounded criticisms and will indicate steps that are being taken by Customs Service to correct any areas in which deficiencies may have been discovered.

Mr. Chairman, I am looking forward to the testimony today and hope that we can find a way to improve our relationship with Customs in the business community and in world trade.

Chairman PICKLE. Thank you. Does any other Member have any preliminary statements?

Mr. RANGEL. I would, Mr. Chairman.

Chairman PICKLE. Mr. Rangel.

Mr. RANGEL. Thank you, Mr. Chairman, for this opportunity. Let me take this opportunity to congratulate the Customs Service for the outstanding job that the men an women in the Service has been doing over the years with very, very limited resources.

It really surprises me that when the Commander-in-Chief says that the importation of drugs is a threat to our national security; that we would find those people in the private sector say that they are prepared to declare war and just say no, but they don't want to be inconvenienced.

I think the fact that we have not had hearings and the fact that you have been perceived as a "Lone Ranger", perhaps is due to the fact that you have done an effective job and there was no need for us to have strenuous oversight.

I have only been in the Congress for 18 years, but to believe that we would have to encourage the private sector to come forward if their profit margin was adversely affected or to further believe that they have been in some way been silent while this terrible burden has been placed on them by some part of the United States Government, I am certain that as we face our voters every two years that somehow we would have found some way to share their concern as to the burden that Government was placing on them.

Nevertheless, I had the opportunity to sit in an oversight meeting. The last one that we heard and certainly we heard from the Pilots Association and silence wasn't a part of their agenda in front of this subcommittee. They had indicated that they just didn't like the checks that Customs was having on them.

I shared my sympathy with them and asked just what checks did they have on themselves as related to this epidemic that is sweeping our nation and the world and they said they hadn't gotten around to it, but they had some general outlines as to how they would detect whether their membership was abusing the profession of flying.

I know today you heard discussion on commercial operations, but I thought as chairman of that committee, we might congratulate you on the efforts that you have had in trying to keep our country safe from drugs. To say that you have had no oversight, I think, would be a political statement, because from recent commercials, I understand the Vice President of these great United States was providing oversight over all of our borders, and unlike Senator Quayle, I knew he was there.

Thank you, Mr. Chairman.

Chairman PICKLE. We thank you, Mr. Rangel, for your personal views.

Mr. McGrath?

Mr. McGRATH. Thank you, Mr. Chairman, and I want to thank you and express my appreciation to you and to the panels that we have had during these hearings regarding the activities of the United States Customs Service.

Mr. Chairman, I will be leaving the hearing after half an hour or so for another hearing, and a half an hour after that I will be speaking to the annual Convention of National Customs Brokers and Trade Forwarders Association at the Hyatt. I expect to see some of my friends from the Customs Service over there later.

The tremendous growth in international trade, Mr. Chairman, over the last two decades has increased the complexity of the tasks facing the Customs Service. I think our prior hearings on this subject bore out my long held view that Customs needs new tools to respond to the pressures and demands of international commerce.

I hope our hearings will raise the status of Customs' commercial operations which have taken a back seat to drug enforcement in related priorities over the last few years as perhaps they should.

Obviously, we face a serious drug problem in this country which consumes a great deal of effort by our Customs officials. We also face a tremendous challenge in international trade and Customs is a pivotal and key player.

I appreciate the appearance of Commissioner von Raab today and the panel which he has assembled of his staff and regional commissioners.

We have had several differences over the last eight years, but the Customs officials I have dealt with over those years have always tried to be responsive, cooperative, and congenial.

I do hope, however, that this hearing will provide the subcommittee with guidance for the future policy initiatives as it relates to the Customs Service.

Thank you, Mr. Chairman.

Chairman PICKLE. Thank you, Mr. McGrath.

Now we are going to ask Commissioner von Raab to proceed with his statement. The Commissioner is accompanied by several gentlemen here with the Customs offices. I believe Michael Lane is the Deputy Commissioner. Mr. Lane is at the desk there with Mr. von Raab. Also you gentleman hold up your hands because some may come up later.

Eugene Mach, Assistant Commissioner for Commercial Operations; Mr. Samuel Banks, Assistant Commissioner for Inspection and Control; Mr. Edward Kwas, Regional Commissioner, New York Region; Mr. James Piatt, Regional Commissioner, Southwestern Region; Mr. Robert Grimes, Regional Commissioner South Central Region; Mr. Philip Spayd, Regional Commissioner, Northeast Region. Mr. Spayd, S-P-A-Y-D; Mr. George Heavey, Regional Commissioner for the Southeast Region.

STATEMENT OF WILLIAM VON RAAB, COMMISSIONER OF CUSTOMS, U.S. CUSTOMS SERVICE, ACCOMPANIED BY MICHAEL LANE, DEPUTY COMMISSIONER; EUGENE MACH, ASSISTANT COMMISSIONER FOR COMMERCIAL OPERATIONS; SAMUEL BANKS, ASSISTANT COMMISSIONER FOR INSPECTION AND CONTROL; EDWARD KWAS, REGIONAL COMMISSIONER, NEW YORK REGION; JAMES PIATT, REGIONAL COMMISSIONER, SOUTHWEST REGION; J. ROBERT GRIMES, REGIONAL COMMISSIONER, SOUTH CENTRAL REGION; PHILIP SPAYD, REGIONAL COMMISSIONER, NORTHEAST REGION; GARNET FEE, ASSISTANT REGIONAL COMMISSIONER, OPERATIONS, SOUTHEAST REGION; AND MICHAEL SCHMITZ, COUNSEL

Mr. VON RAAB. Mr. Heavey is not here. Garnet Fee is here, the Assistant Regional Commissioner.

Chairman PICKLE. We are glad to have these gentlemen with us this morning. Commissioner, we ask you to proceed. I notice that you have a statement here of some 20 plus pages or thereabouts. Do you want to follow the script or do you want to summarize it or how would you like to proceed?

Mr. VON RAAB. Mr. Chairman, I would like my long statement printed in the record, if it is permissible with this committee, and then I would just summarize or actually make a short statement.

Chairman PICKLE. That will be satisfactory.

Mr. VON RAAB. So we can get to your questions.

Chairman PICKLE. If you will, then, as you proceed on your written testimony, would you identify where you are so that we might follow you better from the——

Mr. VON RAAB. I am not reading from my written testimony. This is a very short statement I will read as a summary.

Chairman PICKLE. That would be fine.

Mr. VON RAAB. Mr. Chairman, thank you for this opportunity for the Customs Service to appear before your committee to explain the programs and the directions that we are taking. I appreciate this opportunity.

I have not appeared before this committee before. However, I have had many conversations with certainly some of your members. Particularly Congressman Schulze, Congressman McGrath, and Congressman Rangel.

I would certainly echo Congressman Rangel's concerns about the efforts that we are making in the drug wars. I have spent enormous amounts of time with Congressman Rangel, both in his office, before his House Select Committee on Narcotics, and occasionally we have appeared on television together. I must say always on the same side trying desperately to defend this country against the narcotics problem.

The United States is the world's largest trading nation. We are the world's largest importer and the world's largest exporter. Our trading activity grows and grows. Last year over $400 billion in merchandise entered the country and over $0.25 billion in goods was exported.

We processed over 8 million formal commercial entries last year as contrasted to only slightly more than 4 million entries in 1980.

We collected over $16 billion in revenue as contrasted to only about $8 billion in 1980.

At the same time we are the world's most efficient and facilitative customs service. While carrying out our mission, we interdicted record levels of narcotics. In 1980 we seized 2,500 pounds of cocaine. Last year we seized over 100,000 pounds of cocaine. While some of that that can be attributed to continuing increases in supply, it should also be regarded as an achievement for the men and women, the programs and systems, and approaches of the Customs Service.

Our job is a big one and I believe we are doing it well. Nonetheless, we have carefully reviewed the testimony from your previous hearings. We have listened carefully, examined our programs and have made, or are in the process of making, changes where appropriate.

To some extent criticism of Customs' performance is inevitable, inasmuch as we are the focal point of significant conflicting pressures. Those wanting to facilitate the flow of imports are critical of Customs when they believe we are too zealous in enforcement. Domestic industry wanting to ensure, and rightfully so, the full protection of the law is concerned that Customs is not aggressive enough in carrying out our enforcement responsibilities.

We have such conflicting pressures with many commodities, including textiles, steel, automobiles, electronics and grand market articles. We have a progressive approach for carrying out our commercial mission which I would like to summarize briefly.

We are endeavoring to process merchandise through automated means by computer systems, the automated commercial systems to help us be more selective and to assist employees' focus on high risk merchandise.

We are working with the business community to develop and implement those systems. We are pursuing uniformity in classification that includes present entry classification and the provision of binding rulings on a timely basis.

We are expanding our training program in automation for Customs employees as well as the importing community. We are continuing to plan for the effective implementation of the harmonized system and we strive in all areas to ensure effective enforcement is not at the expense of facilitation.

We endeavor to respond to all complaints alleging poor Customs processing or performance. However, no plan can be better than the quality of personnel implementing it. Our employees are the true Customs strength. We have the best personnel you will find in any federal agency. The professionalism, commitment and effectiveness of our inspectors, import specialists, agents and support personnel are unexcelled.

Finally and most importantly we are willing to continue to listen. We realize our major purpose here today will be to provide information, to answer questions on our performance. We hope we do that effectively. We are committed to approaching these hearings with an open mind, with honesty and sincerity, so we can confirm that our plans will solve the problems. We are receptive to new ideas, suggestions and initiatives for improving our performance.

Thank you again for the opportunity to be here.

[The statement of William von Raab follows:]

STATEMENT OF WILLIAM VON RAAB, COMMISSIONER, U.S. CUSTOMS SERVICE

Mr. Chairman and members of the committee. I am pleased to come before you today to discuss your review of Customs Service operations and to talk about what Customs is doing and has done to address your concerns.

As you know, Mr. Chairman, the Customs Service was founded 200 years ago and charged with a dual mission of collecting revenues on imports and enforcing U.S. import laws. As such, we are both a revenue agency and an enforcement agency.

The early Customs revenue mission contemplated collection of duties and taxes owing to the U.S. Treasury while the enforcement mission embodied powers to oversee admission of articles into the country, preventing entry of so-called "contraband" and items otherwise disruptive to an infant economy.

Over the years, as the U.S. role in the world changed, so too did the mission of Customs take on new dimensions. Today, we still have the basic dual mission of revenue collection and enforcement, but it is now multi-dimensional.

Essentially, revenue collection today is part of the overall commercial operations mission, and includes assessing, collecting and protecting revenue accruing to the United States from duties, taxes and fees. In FY-1987, Customs collected $15.7 billion in revenue; that figure is projected to grow to nearly $18 billion in FY-1989.

Under the commercial operations umbrella, Customs must also control, regulate and facilitate carriers, persons and articles entering or departing the U.S. In FY-1987, over eight million formal merchandise entries were processed by Customs as were over 310 million persons.

Administration of trade statutes, regulations and rulings is yet another dimension of the Customs mission. As a principal border enforcement agency, Customs is charged with enforcing over 400 laws. We are generally responsible for administering laws which protect American business, agriculture and public health. These statutes relate to such diverse and rarely talked about areas as motor vehicle safety and emission standards on imported vehicles, radio-active material standards, animal and plant quarantine regulations, food and hazardous substance prohibitions and illegal pornography.

Customs also administers this nation's trade program to include quotas on textiles, steel, meats and dairy products. The Service also collects dumping and countervailing duties as well as trade statistics.

The most prominent element of the enforcement mission is the Customs role as the lead agency in narcotics interdiction. In this capacity, Customs narcotics seizures for FY-1987 include 88,000 pounds of cocaine and close to two million pounds of marijuana. The cocaine seizures alone represent a 67% increase over the previous year. Our FY 88 cocaine seizures have already exceeded 100,000 pounds and may exceed 125,000 pounds by the end of the fiscal year.

As you know, the narcotics interdiction role is a tremendous responsibility for Customs, requiring staggering resources, and patient and careful judgement as to how those resources are used.

As you can see, Mr. Chairman, Customs has an immensely broad operational mandate comprised of both commercial and enforcement missions. Within the commercial mission is a dilemma which, I think, is part of the reason we are all here today. That dilemma is strict enforcement of the trade laws on the one hand, versus facilitation of the flow of increasing volumes of cargo on the other. At this point, a brief look back at the not-too-distant past is helpful.

Beginning in the 1980's, there were conflicting schools of thought on the Hill as far as where resources should be focused. One school of thought said that more resources were needed for enforcement while the other school of thought said that more resources were needed for cargo facilitation, given the increasing consumer appetite of our economy which stimulated more imports. Both schools of thought were right, but our resources had limits.

Customs knew that the narcotics enforcement efforts had to be strengthened and congressional pressure leaned in that direction. Those enhanced narcotics enforcement efforts must be maintained today. At the same time we began to move in the direction of enhancing our narcotics enforcement efforts, you will recall that the dollar strengthened. Its ascent, coupled with the productivity growth and maturity of certain foreign economies, forced a dramatic increase in the volume of imports entering the United States. These increases, along with technological innovations in transporting and packaging more sophisticated merchandise placed new and unanticipated burdens on Customs officers and the ability of the Service to carry out its traditional missions. The changes have been met with more diverse trade control programs.

Today, Mr. Chairman, the Customs Service has begun to shift its focus to dealing with the enormous burdens and complexities of facilitating the movement of cargo coming into the U.S. while at the same time strengthening the trade law enforcement mission.

This huge effort involves large resource shifts in accordance with Administration, congressional and trade community desires, and forward-looking strategies to allow Customs to respond to an increasingly fast-changing world trade environment. In short, we are posturing for the future.

In order to posture the Customs Service for the future, various goals have been set. The pursuit of these objectives recognizes that the global trading environment is changing at a rapid pace and in a dramatic fashion. Therefore, Customs must position itself to capitalize on opportunities, and to accommodate rapid movement of larger volumes of cargo and the evolutionary information flow which supports such movement. At the same time, we cannot lose the ability to control merchandise flow of sensitive products.

Customs views these goals as being supportive of the desires and needs of the trade community. Our mission and our intent is to accommodate our customer--the importer. Some of the goals are short-term and some are medium-term; all are consistent however with a necessary long-term vision.

At this point, Mr. Chairman, I would like to highlight some of the major Customs efforts in detail.

Day One

A major ongoing program today is the Day One Program. This effort is a visionary one designed to look toward the 21st century.

The name explains the thrust of the Day One Program. The basic idea behind Day One is this: if we were starting the Customs Service today, with only the laws we have to enforce and the current workload, how would we organize, staff and execute to accomplish this mission. The main features of our original Day One concept emphasized operating in a non-intrusive, paperless and fully automated fashion.

Since announcing the Day One Program, Customs has:

-Begun implementation of paperless electronic entry filing nationwide.

-Established Trade Inspector Positions in JFK, New York Seaport and Newark to test the viability of a hybrid inspector/import specialist.

-Implemented a paperless entry summary pilot test at 2 northern border sites as an extension of line release.

-Developed, tested and expanded a one stop quota processing program--a program that has allowed us to reduce quota processing times from as much as 4 days to one to 5 hours. This program is now operational in 22 major ports.

-Notified some 20 other Federal Agencies of our intent to use automation to eliminate paper. Some of these agencies are already actively working with us to re-route paper requirements that they impose on importers. These agencies include: Food and Drug, Department of Transportation, Fish & Wildlife and the Federal Communications Commission.

As we move forward with the Day One concept, we are following a strategic vision blueprint called the McKinsey Report.

McKinsey Report

To help us chart our future course, and to ensure we were not developing an organization incompatible with modern day business practices, we engaged the international consulting firm of McKinsey & Company. McKinsey was instructed to develop a strategic plan based upon the plans of those impacted most by Customs--the import trade community. To develop the strategy, McKinsey utilized an approach which viewed Customs commercial operations from the vantage point of a "Chief Executive" interested in maximizing his company's performance.

The January 1988, McKinsey Report is based on data assembled during interviews with U.S. Customs managers and approximately 75 representatives from a broad spectrum of U.S. and European firms, intermediaries, and agencies involved in international trade.

The report documents seven major needs of U.S. importers and it recommends 22 opportunities for Customs to pursue in addressing these needs. The opportunities are presented based on impact and feasibility for both Customs and the trade and are supported by recommendations, benefits and implementation plans.

The major opportunities include:

-Continue to expand ABI (We are now over 62%).

-Allow entry summaries to be filed in a separate location from where goods arrive (Triangle Processing). (A pilot test is scheduled to begin October 1, 1988, in the New York Region). A recent GAO report has endorsed the PAIRED System which essentially is triangle processing.

-Eliminate paper backups for entries and entry summaries. (We have already gone nationwide with paperless entries and pilot tests are in place for paperless entry summaries as an extension of line release).

-Increase import specialist time devoted to preclassification. (A task force has been formed and we have already started necessary training. By January 1989, we intend to have all designated national import specialists trained and preclassification expanded to all commodities).

-Increase post audit resources. (100 new auditor positions have been authorized and 60 percent of these positions filled. Our new recruits and existing staff are to be trained in auditing automated systems).

-Encourage Electronic Funds Transfer (EFT). In March we initiated a test of an electronic automated clearing house system with Mellon Bank and a large northern border broker. We are looking at the expansion of this pilot.

-Influence development and encourage adoption of EDIFACT.

EDIFACT

EDIFACT is the emerging global standard for electronic data interchange (EDI). It is perhaps the most significant recommendation of the McKinsey report because of its significant implications for every business involved in international trade and for Customs Services around the world.

A major finding of the McKinsey survey revealed that there is no universally accepted standard for global exchange of electronic data. Rather, numerous systems have been built using a plethora of different standards. These standards do not maximize the benefits of EDI--allowing users to cross industry, national and international boundaries.

In February, we modified our course when we announced Customs intent to adopt EDIFACT standards. Since that announcement, we have worked with the U.S. appointed experts for North America and Western Europe to develop entry message and related response message. The message incorporates all of Customs unique documents plus the invoice into a single message. We will be piloting a data processing test with three multinationals. Also an operational pilot in limited ports is scheduled for the Spring of 1989.

Automated Commercial System

The Automated Commercial System (ACS), Customs single, comprehensive automated system for handling its commercial processing, is beginning its fifth year of operation. In 1988, the numbers of Customs and trade community system users grew substantially. There are now nearly 3000 on-line Customs terminals in place, and 800 trade community remote batch terminals communicating with the Customs Data Center. At the same time, significant new capabilities were implemented, thus bringing ACS ever closer to the needs of its users.

As mandated by the McKinsey Plan, ACS has three keystone modules: the Automated Broker Interface (ABI), which provides for the exchange of electronic entry data with brokers and importers, the Automated Manifest System (AMS), which allows the exchange of electronic manifest data with sea carriers, and selectivity processing, which automatically identifies high risk shipments for intensive examination. It is the selectivity process which allows USCS to accomplish the dual functions of facilitation of low-interest merchandise while increasing control of trade sensitive commodities.

During the past year, the percentage of Customs total entry summaries handled by ABI has increased from 33 percent to 62 percent. The number of operational brokers and importers has increased from 140 to 550. The percentage of Customs total bills of lading handled by AMS has increased from less than 20 percent to nearly 50 percent. Cargo Selectivity processing has expanded from 70 to 131 ports. Line Release, a specialized cargo selectivity system for northern and southern border locations, was expanded to 35 locations and is now speeding release for nearly 1 million shipments annually.

Customs and the Bureau of the Census have jointly developed a program for the electronic transmission of entry summary statistics to Census for all ABI transactions. This eliminates forms, saves keying for Census, improves accuracy and provides more timely trade statistics. This capability is fully operational for 62 percent of Customs entry summaries.

To go along with this system expansion, Customs is placing great emphasis on the ACS training program and its trade community field support teams. To date, over 16,000 training persons/sessions have been conducted, and 15,000 are planned for the coming year. ACS field teams have been established in 17 cities for the purpose of marketing and supporting importers, brokers, carriers, port authorities, service centers and other trade community users.

Significant new system features added during 1988 include: the capability for entry filers to pay estimated duties and taxes via electronic funds transfer through an automated clearinghouse bank, an automated Harmonized System tariff file, and operational pilot programs for electronic (paperless) entry and entry summary.

Outlook

Now that the basic system is in place, and several new modules have been added, the major objectives of ACS are:

1. Complete additional modules such as the Air Manifest System, and add new capabilities and benefits including electronic (paperless) processing for system users, both Customs and the trade community. Customs is taking the lead in inter-agency interfaces. By working with agencies such as Food and Drug Administration, Consumer Product Safety Commission, Department of Transportation, and Fish and Wildlife Service, Customs expects to eliminate handling of 3 million other agency documents by the end of Fiscal Year 1989.

2. Expand the number of users, both Customs and the trade, and continue to provide the necessary system training.

3. Complete implementation of a joint program with the Bureau of the Census which allows us to take advantage of the benefits of complete computer processing of non-ABI entries.

4. Run pilot programs for electronic transmission of invoice data using the international standard protocol, EDIFACT.

5. Acquire the additional computer and communications hardware to support the expected growth.

6. Configure the ACS system to provide maximum support for enforcement needs, including rapid access to information for investigations, intelligence research, audit trails and system security.

Centralized Examination Stations

A compliment to the Automated Commercial System (ACS) is the Customs Centralized Examination Station (CES) concept. The CES program is designed to work in tandem with ACS to direct critical manpower resources to the examination of only that cargo which requires specific attention from an examination standpoint.

As you know, Mr. Chairman, the CES program was undertaken in response to a GAO report entitled, "Customs Imports--Customs Needs to Better Assure Compliance with Trade Laws and Regulations". This report was critical of the methodology employed by Customs to examine imported cargo.

As a direct response to the report, immediate steps were taken to assure that Customs did indeed provide more uniformity in the examination and release of imported merchandise.

The 1987 Budget Reconciliation Act suspended operation of Customs CES's at airports pending a GAO study to be completed by March 30, 1988. The law also stipulated that Customs notify Congress at least 90 days prior to opening or reestablishing CES's.

The GAO has completed its study, and could find no basis for recommending against restarting the CES program at certain airports. Therefore, Customs intends to work within the guidelines set forth by Congress to establish CES's at those locations where they are warranted. The appropriate committees in Congress have been notified of Customs intent.

COMMERCIAL FRAUD

Customs will continue to give commercial fraud activities a high priority because they support trade programs. The shift in recent years of resources to significant fraud investigations has produced excellent results in terms of financial gains to the Government and prosecution of significant criminal cases.

Domestic industries have been protected from unfair and illegal international trade practices and the Government has received substantial monetary returns from criminal fines and civil penalties.

We will continue our use of all Customs disciplines in fighting fraud, using the expertise of special agents, import specialists, inspectors, regulatory auditors and laboratories. High-risk commodities such as textiles, wearing apparel, steel, coffee, sugar and electronics will continue to be targeted, as will the detection of copyright and trademark violations.

Increased prosecution and penalties resulting from these investigative areas will play a major role in ensuring that the integrity of trade agreements are maintained.

With a rapidly growing automated environment, we have taken the initiative in hiring and training a cadre of agents, auditors and technical personnel who are able to effectively carry out our missions in an increasingly automated world.

Customs continues to be presented with an increased commercial fraud threat. Prohibited quota merchandise continues to enter the U.S. commerce through the presentation of false documentation upon entry, use of counterfeit visas and export licenses, third countries as transshipment points and misdescription of merchandise. In addition, revenue losses are suffered owing to undervaluation and the shipment of excess merchandise not declared upon entry. Customs will concentrate resources (especially newly trained computer staff) on such cases with high expectation of major revenue recoveries and enforcement of trade protection laws.

While there has been a continuing focus on other fraud initiatives, recent concerns expressed by Congress and domestic industries, as well as the administration's policy on free and fair trade, require that we place a high priority on the enforcement of country-of-origin marking requirements. Customs has increased its effort to stop fraudulent marking practices and is conducting a major marking initiative which is designed to target a wide range of commodities particularly susceptible to violation. To date, the results of the marking enforcement program have confirmed our suspicions of significant violations.

19 U.S.C. 1595a(c)

Mr. Chairman, at this point I would like to address a subject which has been of significant interest to some members of your full committee in general and the Trade Subcommittee in particular. The subject is seizures under 19 U.S.C. 1595a(c).

On October 27, 1986, 19 U.S.C. 1595a(c) was enacted under the Anti-Drug Abuse Act of 1986. Section 1595a(c) provides as follows:

> "Any merchandise that is introduced or attempted to be introduced into the United States contrary to law (other than in violation of section 592) may be seized and forfeited."

Since section 1595a(c) provides for the seizure of "any" merchandise under the circumstances proscribed therein, it has been Customs position that this necessarily includes merchandise involved in commercial violations.

As to the question of whether the statute is applicable to merchandise also involved in a violation of 19 U.S.C. 1592, Congress expressly stated the following:

> "It is the Committee's intention, however, that the provision would allow seizure and forfeiture in those cases where merchandise has been imported contrary to laws other than section 592 even if the importation is also a violation of section 592." House Report No. 794, 99th Cong., 2d Sess. (1986)

It is our view that section 1595a(c) clearly authorizes seizures and forfeitures for commercial violations of statutes other than section 1592.

Despite the broad language of 1595a(c), Customs Headquarters established from the very outset, a policy for a responsible and uniform administration of section 1595a(c). This policy initially was set forth in Customs Directive 4400-03, issued on March 27, 1987. These guidelines limited the use of section 1595a(c) to cases involving restricted or prohibited merchandise and provided additional conditions to be met for seizures of shipments involving textile and steel overages (i.e. shipments in which the quantity exceeds the amount indicated on the accompanying visa or VRA certificate).

After evaluating the operation of the new seizure authority under the above guidelines, more restrictions were imposed under Customs Directive 4400-07 issued on January 26, 1988. This Directive presented a clearer statement of the general policy to limit the use of section 1595a(c) to violations involving restricted or prohibited merchandise. In addition, this Directive provided for the following:

> the general seizure criterion for textile and steel shipments was increased from a 5 percent overage to a 10 percent overage, even though a one percent overage still represented a violation of restrictions imposed under a bilateral textile agreement and Voluntary Restraint Arrangement;
>
> monetary penalties would not be assessed in addition to seizure unless there were aggravating circumstances;
>
> guidelines for remission of forfeitures under section 1595a(c) (with dispositions ranging from full remission to denial of the claim) were set forth in the Customs Directive and
>
> all seizures made prior to January 26, 1988, are not to be counted against seizures made on or after this date. Thus, the first seizure made on or after January 26, 1988, would be considered a "first offense" under the remission guidelines.

In addition to these general guidelines, Customs Headquarters issued special guidelines under Customs Directive 4400-04 (May 11, 1987) restricting seizures under section 1595a(c) in cases involving country of origin marking violations of 19 U.S.C. 1304 and 15 U.S.C. 1124.

We have found that despite the change in Customs policy under section 1595a(c), and the "fresh start" granted on January 26, 1988, the number of seizures has not declined significantly, simply because even more shipments are being imported contrary to law.

UNIFORMITY

Mr. Chairman, the Congress has expressed a concern over uniformity in the Customs Service, particularly classification uniformity. The Customs Service considers this issue a critical one because it impacts on both the trade community and the Customs Service.

Viewed from the perspective of the trade community, a lack of classification uniformity results in inequitable treatment of importers, variances in trade program requirements and inconsistencies in classification and duty rates. Viewed from the Customs perspective, a lack of uniformity results in duplicate requests for internal advice, duplicate issuances of classifications by import specialists and unacceptable variances in entry summary reviews.

Customs is aware of the need to ensure nationwide uniformity and has moved to develop effective programs to improve on the uniformity question. The primary thrust of the uniformity program which Customs is now implementing allows, under certain circumstances, for a binding classification ruling to be obtained through district directors. A cadre of deputy national import specialists will participate in the program, the goal of which is a binding ruling for all requests within 30 days. The program begins on January 1, 1989 for all eligible commodities.

The uniformity program is predicated on pre-entry classification which in turn is expected to promote voluntary compliance. The assumption is that the resolution of classification issues prior to importation and entry will promote uniformity based on advance advice which is binding on Customs and the importers. Pilot programs were begun this past August.

Customs has also established nationwide uniformity in the processing of entries and the structure of entry control units. This initiative was accomplished by standardizing entry processing procedures, liquidations, in-bond procedures and protests. The system will be monitored by a standard audit plan for ensuring compliance with the Entry Simplification Plan.

Mr. Chairman, the point at which we now find ourselves allows for many choices. Some of those choices are endemic to the conflict of the dual mission dilemma to which I referred earlier. For example, if we choose to accentuate strict enforcement of the trade laws to include stringent commercial fraud scrutiny, there must of necessity be an impact on facilitation.

Given the built-in dilemma to the Customs mission, it is imperative that Customs innovations and implementing actions be carried out in congruence with a strategic vision, and in accomodation to the changing needs of the trade community.

I cannot sit here today and give you a grand forecast of what the Customs Service will look like five or ten years from now or early in the 21st century. What I can do is tell you that I and many people in all areas of the trade community feel that it is imperative that we move forward with the goals embodied in the McKinsey Report.

As we move forward with effective enforcement and facilitation, the efficient use of Customs manpower and resources will be crucial. For this reason, the opportunities on which to capitalize, as outlined in McKinsey, are of paramount importance. Some of these recommendations are already being implemented because they represent sound use of resources and because they are consistent with the desires of the trade community, particularly our customer base--the importing public.

Mr. Chairman, we recognize today that the different economies which make up the world trading community are growing and maturing each day so that the needs of the participants in this country must change. We also recognize that as those basic needs change, Customs must adapt its role to fit such needs. Thus, while the basic mission of Customs remains the same, we are committed to innovation in our processing methods. We also are committed to bettering our methods of enforcing existing trade laws, and positioning the Service to be ready to enforce new trade laws. We will also continue to work internationally to assure that worldwide trade procedures such as the Harmonized System and EDIFACT continue to be developed and implemented.

As you know, the European Community is moving toward its 1992 objective of one large common market, free of barriers. While we cannot predict the future, it is prudent to assume that the companies operating in that market will attain tremendous economies of scale to compete with our domestic manufacturing. That in turn could bring forth yet more huge import volumes.

Mr. Chairman, I realize that as we move forward with changes, there will be shakeups to various interests accustomed to doing business in set ways. But the law mandates that Customs facilitate the flow of merchandise into the country. The constituents in your districts who create demand for fabric used to make clothing want that clothing on the shelves when they need it. They do not care how many business layers it passes through.

The efforts we are now undertaking will move us forward toward a new age in trade processing that, while not completely free of problems, will be a thrust in the right direction. We are leaving behind the ways business was done in the past--we have to because the old ways will not work much longer. The key therefore to a better Customs Service in the future is to grasp the reality of a smaller world and adjust to it ahead of time with an expanded vision.

I would like for this committee to realize that the men and women of the Customs Service are keenly aware of their responsibilities in a rapidly changing trade environment. These individuals have done a commendable job under very difficult and demanding circumstances, and often seemingly at cross purposes, given the dual mission. I am confident therefore that as we move forward in whatever directions, the Customs Service can be counted on to do what has to be done.

Chairman **Pickle**. Thank you, Mr. von Raab. You have furnished our committee with a full statement. I think some of the members have had a chance to look over your statement. We may have questions about it. I notice that a great deal of your testimony pertains to the implementation of the McKinsey plan and the various programs you envision that can be put in force through automated services and the various facets of that kind of operation.

I don't guess any of us would know how that will work out because most of it is to be implemented and you are going to put it into place. I think all of us would be interested in knowing what you have specifically recommended for operations and when it goes into effect and later to know the effectiveness of it.

We are mindful of the steps that you hope to take. Rather than go through your testimony, I think we might proceed with some of the questions that I have made reference to, the examples I made reference to. I think we will proceed with that and if any Members want to come back to any comment he made on the statement, they may be permitted to do that.

Let me get with you on some of the questions. I want to repeat again, some examples we are making today are not sensational or headlines, they are just regular problems that the trade and commercial community feels on a regular basis.

So I am going to start off first by talking with you about how Customs works with the international trade community when you are developing or considering new programs. So let me start off by saying that we had submitted to you a question about the—what kind of current procedures is followed by Customs before implementing new policies. Your letter to us on June 28, you said this is the procedure that you follow. One, a project is proposed at any level from a Customs aide to the commissioner or broker or importer. Secondly, the idea is written up and sent to various offices for comment.

Third, a group of experts is gathered to discuss the aspects of the project. Fourth, it is given a priority by managers. Fifth, the project is tested in a field office. The project is evaluated and retested, if necessary. Seventh, Federal Register notice is given and comments analyzed, if necessary. Eighth, if it is to be implemented nationally, a Customs directive is issued, and if it is deemed necessary, an instructional team will be sent to field offices.

That is the response you gave us as to your procedure that you followed in implementing new policy and procedures. I assume that is basically your position and your procedure now. Is that what you have said and is that the response? I don't want to proceed on the——

Mr. **von Raab**. In the most general sense that is the procedure that is followed. It depends on what action it is that is to be taken as to which of those steps will be taken.

Chairman **Pickle**. There may be some variance but in general you try to follow those, one through eight steps. I am assuming that is what you do today.

Mr. **von Raab**. There is no written directive to the effect that each of those steps is followed in every case. Generally those are the steps that are followed, that is correct.

Chairman PICKLE. Well, then we are in general agreement then. I think that is in general, how you proceed—I don't know that that procedure is adequate and I am not sure that that is the actual practice of it. So what I want to do is discuss a couple of cases with you and see how it fits in.

The first case I am going to talk about is the red ball, the Red Seal Program. Mr. O'Brien from Oakland and Mr. Leach from the Seattle office said that—from the American Associated Port Authorities—both cited the Red Ball Seal Program in their testimony on August 9.

They recall that there were problems when it was initially implemented in 1985. Do you want to tell me first what the red ball, Red Seal Program is and do you want to make a statement on it?

Mr. VON RAAB. The red seal was—I wouldn't call it a program. It was a strengthening of a program in which it was discovered by the Customs Service that a lot of our in-bound shipments were not being properly secured, because our regulations require that certain merchandise be sealed with special red ball seals.

And having determined that this practice was not in place, we issued a directive which set forth our policy for sealing containerized cargo. With this—we put this policy in place because our program in various investigations had demonstrated that particularly with all the pressures on textiles in the United States, a lot of our cargo represented a very high enforcement risk in that there was tampering of cargo, in-bound cargo in route, and so we took action to correct this shortcoming in our program.

Chairman PICKLE. In effect it was a high security seal for sea borne containers to try to protect inland shipments of goods. When was the program first implemented?

Mr. VON RAAB. Well, the program should always have been in effect. I mean, it was a requirement of the Customs Service that this be done. We discovered it wasn't being done, so it is wrong to say the program was implemented as such. It is correct to say that we discovered a program that should have been in place and was not in place, so we went out and in effect informed the community that something that should have been done, wasn't being done.

Chairman PICKLE. Well, my question was, when was your red seal program implemented, what year?

Mr. VON RAAB. I assume when everybody—many, many years ago.

Chairman PICKLE. Well, I am not going to argue with you about that. I think I will, too, in this sense, before I get to that, though, I think you are evading the question. Let's get back to my procedure of questioning.

I would ask you, if you follow the regular Customs' procedure, those eight steps I outlined for you in implementation of the red seal program?

Mr. VON RAAB. No, because this was not a new program.

Chairman PICKLE. Why didn't you?

Mr. VON RAAB. It was not a new program. It was a reminder to trade that a program that should have been in effect was not and therefore having been in an existing practice or what should have been an existing practice she——

Chairman PICKLE. You say this is an old program, yet June 11, 1984 Customs directive number so and so, for sealing containerized cargo transport and immediate transportation and procedure.

Mr. VON RAAB. That is correct.

Chairman PICKLE. That was a directive, so that is a new directive over old procedure. Is that what you are saying?

Mr. VON RAAB. That is right.

Chairman PICKLE. But it still was a change in policy. The trade community didn't understand that, that you were going to put in the red ball seal, I keep saying—the red seal program. They have been using different things for years and years and now you put out a directive and you say it wasn't new. That wasn't a new directive. Why did you put it out then if you didn't think it was needed?

Mr. VON RAAB. In many cases they weren't sealing at all. So we recommended to them our version of the seal, by having had them respond to us, we immediately agreed to using their high security seals which they found a more agreeable approach.

Chairman PICKLE. You had the program in operation but you put it and issued a directive and said it goes into effect June 11. Now, the trade community began to complain because containers were stacked up all over the country, and you said, well, you will give them until August 1, but you didn't implement or you didn't correct or ease up.

You finally let them issue a high security seal instead, later?

Mr. VON RAAB. That is correct.

Chairman PICKLE. They don't do this now. Because cargo containers were stacking up all over the United States. Is that false or correct? Is that true?

Mr. VON RAAB. I think the statement containers were stacking up all over the nation is probably an exaggeration. The reason that we actually went to the seal was that we found some tremendous problems in terms of violations of our laws. In the 5 months before we put the seal program back into effect, if you will, we had over 59 seizures of over $3 billion worth of goods that would have otherwise not taken place had we had an effective seal program in effect.

That is why we did what we did.

Chairman PICKLE. During this same period, containers were stacked up in the Seattle area and all over the country?

Mr. VON RAAB. There were delays in Seattle.

Chairman PICKLE. I am going to put letters in the record, from Congressman Norman Dicks, protesting strongly about the red seal program. I am also going to put in the record statements from the people from the Seattle office and other parts of the country protesting the fact that these containers were all stacked up.

[The information follows:]

12845

RED BALL SEAL LETTERS
AND NEWSCLIPPINGS.

September 4, 1985

The Honorable William Von Raab
Commissioner of Customs
U.S. Customs Service
1301 Constitution Ave. NW
Washington, D.C. 20229

Dear Commissioner Von Raab:

I am writing to express my deepest concern regarding a new Customs Directive called the Red Ball Seal Program.

As you know, when containerized cargo arrives at a port of entry, the van has a seal on the door and the number of the seal is annotated on the documentation. I see absolutely no reason why Customs is now requiring an inspector to place a red in-bond seal on the container. The present system has worked very well for enforcement needs.

Commissioner Von Raab, as you well know, cargo tonnage at the Ports of Tacoma and Seattle have dramatically increased in the last several years. Yet the number of inspectors assigned to the waterfront has decreased. This is an intolerable situation. Now, you are adding one more time-consuming requirement for our few inspectors. This program is proving to be extremely costly to our shippers and is resulting in lengthy delays moving cargo. I cannot stress strongly enough my belief that you, as the Commissioner of Customs, must meet with representatives of the shipping industry and listen to their complaints. I have done so and I assure you that their needs are real. I would urge you to reconsider the red ball seal program, as well as address the understaffing issue that continues to worsen in the Seattle district.

I look forward to hearing from you.

Sincerely,

NORMAN D. DICKS
Member of Congress

NDD/tc

cc: Irvin Wallibek
Blaine Johnson
Susan Ackerman
Mike Sawer

Traffic Board
North Atlantic Ports Association
incorporated

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Maryland Port Administration
Baltimore, MD 21202

SEP 23

August 26, 1985

The Honorable William Von Raab
Commissioner of Customs
U. S. Customs Service
1301 Constitution Avenue, N.W.
Washington, D. C. 20229

Dear Mr. Von Raab:

The Traffic Board is the legislative and regulatory arm of the North Atlantic Ports Association, a group representing ports from Virginia to Maine, and has traditionally been active in the many port issues affecting the range. It is in this capacity that we have directed our focus on your Directive No. 3270-02 on Sealing of Containerized Cargo Transported Under Immediate Transportation Procedures.

We are certainly supportive of Customs' efforts both to stem the flow of unlawful cargo and end the tampering with sealed containers. It is the means by which you decided on your course of action, with no avenue for public comment, and the method you chose, overly broad, that has prompted the Traffic Board to write this letter.

The first point to be made is that the decision to reinstate 'red-balling' was made without the slightest opportunity for industry input as to the nature and extent of the problem, problems caused by your solution, and alternatives to that solution. Customs should consistently seek the input of industries impacted by its actions - more balanced decisions should be the result.

Second, it is apparent, that under your leadership, Customs has become much more sophisticated in its enforcement efforts, moving away from a 'shotgun' approach that tends to burden the industry more than necessary. That Customs would revert to this approach in its new directive, given the great burden on shippers, carriers, and steamship lines, is certainly a step in the wrong direction. This is especially the case in which Customs surely has the means to pinpoint problem areas rather than burdening every port in the country.

By way of its directive Customs seems to say that 'we're too sophisticated and knowledgeable to require industry input but not quite sophisticated enough to propose other than a overly broad costly action.'

The Traffic Board asks generally that such future actions be taken only with the opportunity for prior industry comment and specifically that the 'red-ball' mandate be reconsidered after an opportunity for such comment. We remain supportive of the thrust of your efforts in this important matter.

Sincerely,

J. Stanley Payne, Jr.
Chairman
North Atlantic Ports Association
Traffic Board

JSP/ch

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

to Customs

SEP 11 1985

REFER TO

TRA-6-IC:C DT

The Honorable
J. Stanley Payne, Jr.
Chairman, North Atlantic Ports
  Association Incorporated
Traffic Board
Virginia Port Authority
World Trade Center
Norfolk, Virginia 23510

Dear Mr. Chairman:

This is in reply to your letter of August 26, 1985, in which you express concern over the sealing of cargo transported under Immediate Transportation without Appraisement procedures (I.T.).

As you are well aware, Customs Regulations, 19 CFR 18.4(a)(1), require that conveyances and compartments used to transport merchandise be sealed with red in-bond seals. For several years under our Quantity Control Program, the waiving of the sealing requirement was permitted under certain circumstances. On April 20, 1984, Customs issued a directive calling for the waiving of the sealing of all containers unless specifically requested by the carrier to do otherwise or the District Director deemed sealing necessary for enforcement or revenue purposes, or if requested to seal for valid reasons by other agencies.

An enforcement program was conducted for 5 months to spot-check in-bond shipment integrity and it resulted in 59 seizures of cargo valued at over 3 million dollars. As a consequence, the Customs Service had to address this enforcement threat.

On June 11, 1985, Customs issued a directive which reinstituted sealing for full containerized loads transported under I.T. procedures. This directive requires immediate implementation; however, in order to allow local Customs offices time to notify the industry, to adjust its work practices and to allow carriers time to obtain supplies of seals August 1, 1985, was agreed upon as the date for its complete implementation. The only exceptions to the sealing of I.T. containerized cargo are for carriers participating in the Master In-Bond program and for cargo moving under a Transit Air Cargo Manifest (TACM). In addition, Customs will honor foreign high-security seals without additional sealing provided the seal numbers are noted on the manifest and recorded on the CF 7512. The foreign seal is still to be verified at the port of origin and port of destination as if it were a Customs seal.

A container arriving at a destination port with a Customs seal intact is good evidence that the shipment has not been tampered with. Placing seals on containers is a lesser enforcement action and workload burden than additional container devanning, stripping and inspections. We believe that we have taken an action that, hopefully, will accomplish our required results with a far lower cost to carriers than would be the case if we conducted additional container inspections.

Sincerely,

Garrett J Fee

for E. H. Mach
Assistant Commissioner
Office of Inspection and Control

MEMORANDUM . Sept. 25, 1985

To: Tom Laird, U.S. Customs

From: Judy Metz, Port of Tacoma

Re: Red Ball Seals

Per our conversation of this date, the following are answers and thoughts to the questions on the list:

1. Percentage of containers required to be sealed? 20-22%
2. Number of people (I&C) required to do sealing? You have 3 at CFS.
3. Amount of time spent sealing?
    a. regular hours - CFS - avg - 2hours daily but varies considerably . Plus 1-2 hours for railcar seals- approx every 10 days.
    b. OT - in August we hired Customs twice for overtime due to Red ball sealing on Railcars.
4. What are delays encountered with sealing?
    a. Truckers required to stop at two locations when picking up a container moving on an 'IT'. One to load the container and the other to have the customs inspector install the Red Ball Seal at the CFS.(Station 2). Extra time per container is required and driver is able to make fewer trips per day.
    b. Additional time is required by customs to pre-sign the 'It's, the steamship line must have the paperwork to the Port earlier than in the past. This has created a hardship many times.
    c. The smaller lines suffer the most as they generally do not have the support in-land to utilize the Master Inbond by-pass of the Red Ball Seal.
    d. At this time the P.O.T. is bearing the additional expense of the Red Ball Seal system and the manpower required to work with customs at time of the installation. Eventually these costs must be passed on to the steamship lines in some way.
5. What kind of monitoring/follow up program? The port maintains a list at the CFS as the Red Ball seals are affixed to the container and the time required.

6. Anything Importing Trade (Vessel, Shippers, etc.,) can do to expedite sealing?

   a. Port of Tacoma is able to provide customs with the seal number already on the container(sealed by shipper). This seal number could be verified by your inland destination inspector. This would take the delays off the discharging port and would have the same affect of a red ball seal.

   b. (you have a note -"Seal w/red ball before arrival of vessel by exporter.) If this could be done at origin port the number could be supplied to the discharging port customs inspector as in "a" above. Would [illegible] eliminate congestion at discharging ports.

As a note in our operation, this month of August we had an additional 36 hours of overtime compared to -0- during August of 1984. It is difficult to pin-point the number due to Red Ball Seals, however, our paperwork is handled 4 times rather than 2 times with the old system and as it takes customs longer to return the IT's we must stay and have the paperwork ready for the next days shipping.

Also, at our CFS on heavy shipping days an extra man is hired to work only with customs on sealing the containers.

Judy

Judith M. Metz

CC: Susan Ackerman

PUGET SOUND STEAMSHIP OPERATORS ASSN., INC.
720 THIRD AVENUE
SUITE 2300
SEATTLE, WASHINGTON 98104

April 10, 1986

Honorable Slade Gorton
United States Senator
Room 513, Hart Office Building
Washington, D.C. 20510

Dear Senator Gorton:

In the President's State of the Union Message in January, he stated that the American industry was the most innovative, most efficient and had the best salesmen in the world. We thoroughly agree with his statement. However, in the shipping and intermodal transportation arena of the private sector we have:

1. Heavy, long-term commitments made for ocean liners, specialized equipment and huge modern terminal facilities.

2. The shipping and intermodal transportation community has invested heavily in specialized equipment to efficiently move cargoes from tidewater facilities to inland United States trade centers.

3. Huge amounts of money have been invested in computers and systems at overseas points and throughout the United States in order to facilitate the movement of cargoes and the equipment to move these cargoes.

4. Customs house brokers and shippers' agents have invested in computers and systems in order to facilitate their operations.

The problem now arises with the United States Customs Service operations:

1. In the past few years, the Customs Service has been cutting its work force in the Cargo and Passenger Divisions: Cargo Inspectors, Import Specialists, and Clerks. Inspectors and personnel have been added to the Customs Service, but to the Enforcement Division, at the expense of the Cargo and Passenger Divisions.

2. At the same time, the Service is requesting that the steamship companies or shippers' agents do more and more of their clerical work on documentation.

next sheet attached to PSSOA file

expensive. We have been couriering and "faxing" documents all over the place, cargo has been delayed, we have had angry and upset customers and brokers, and hours of administrative time has been spent in an attempt to resolve this issue. Also, Customs has rejected brokers' entries for a copy of the "manifest page" because the copy of the consolidated IT did not detail the cargo. All of this, when this is not a regulation at all.

These are some recent and ongoing examples. Local Customs Districts are trying to find ways of making their work easier by putting some of their responsibilities onto the carriers. It then takes the carriers months of administrative effort to go through the District, through the Region then through Washington, D.C. to get the local Districts to back off on these issues. Perhaps the most disturbing thing is that some of these requirements are attributed to ACS, so Customs is not necessarily designing their new computer systems to handle their paperflow. Instead, it appears to be a combination of computer systems and the carriers and brokers, who will assist Customs through their manpower shortage problems.

* III. Customs is initiating enforcement programs, policies and procedures they do not have the manpower to support.

A. The Red Ball Seal Program.

The Red Ball Seal Program is delaying the movement of cargo and adding additional expenses to the movement of containers. Due to a shortage in manpower, Customs does not have inspectors available "on call" to affix seals. This is presently being handled by roving teams of inspectors. In the Pacific Northwest, sealed containers are being delayed by at least a day, and the minimum added cost is $27.50 per container. High security seals are costing the carriers $700 to $1,600 per vessel.

In addition to the above, cargo cannot be delivered at destination until Customs inspects the Red Ball Seals. This whole program is labor intensive when Customs is suffering from a severe manpower shortage.

UNITED STATES GOVERNMENT
Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

NOV 27 1985
DATE:

FILE: ENF-1-IC:C TSW

TO : All Regional Commissioners of Customs
All District/Area Directors of Customs

FROM : Assistant Commissioner
Office of Inspection and Control

SUBJECT: Sealing of Containerized Cargo

During the past few months we have held several meetings with Customs managers and trade representatives concerning the sealing of containerized cargo. We believe that some policy refinements can be made, while at the same time ensuring that adequate in-bond controls are still enforced. The following refinements are to be implemented immediately:

Warehouse Movements

At the district director's discretion, warehouse proprietors will be allowed to break and affix Customs seals pursuant to 19 CFR 19.6 (e). District directors will conduct a thorough review of warehouse proprietors' past and present records and consider the following:

- The proprietors' record of compliance with law and regulations as disclosed through spot checks, audits, and Customs investigations; and
- the enforcement risk associated with the cargo (i.e., high-value, quota, etc.).

If, in the district director's opinion, the above-mentioned factors can be satisfactorily met then proprietors may be authorized to break and affix seals. Proprietors shall maintain records of the seal numbers that are broken or affixed. If a proprietor receives a container with a broken or missing seal the district director will be notified and the necessary action will be taken, per Section 19.6(e), Customs Regulations.

Less-than-Container-Loads(LCL's)

Selective sealing procedures will be implemented for containerized cargo that is reworked (e.g. container freight stations, etc.) and subsequently forwarded in-bond in less-than-container-loads.

High-Security Seals

When a foreign high-security seal is affixed by the carrier, Customs will not be required to verify the seal number at the points of origin and destination. We will honor a foreign high-security seal provided that the seal number is recorded on the manifest and in-bond control document. However, district directors will implement procedures to ensure that integrity spot-checks are performed on a regular basis.

I would like to emphasize that in-bond cargo movements remain an enforcement risk. Therefore, high-risk cargo will continue to be intensively examined whenever possible prior to being released to the bonded carrier by Customs.

We will be monitoring these procedures and, if warranted, additional refinements will be made at a later date. If you have any questions, please contact Mr. Thomas Winkowski at FTS 566-5354.

EHmach
E. H. Mach

Trade Winds

by
Bruce Johnson

Daily Journal of Commerce 9-10-85

Steamship industry sees red

A 40-day-old US Customs Service practice of sealing some inland-destination containers with red ball seals has Puget Sound area steamship people seeing red, because of cargo delays and extra expenses being incurred.

Reportedly to restrict the flow of illegal drugs and probably to guard against importer cheating on duty rates and quotas on certain commodities, Customs on Aug. 1 reactivated an old rule requiring that in-bond containerized cargoes destined for immediate transportation to inland destinations must be sealed at ports of entry before they are permitted to be transferred to rail or truck.

A Customs inspector must witness sealing of the container and record the number of the seal, which is inspected by another Customs officer at points of destination before the container can be opened.

Since the procedure went into effect, on-dock delays of cargo have been reported at Seattle and Tacoma as well as at other container handling ports. Carriers attempting to expedite the cumbersome red ball seal process are paying up to $10 per container in Customs officer overtime, extra container handling and other expenses.

Hurt the hardest are smaller carriers that do not have master-in-bond movements under the ocean carrier's custody from overseas point of origin to inland US point of destination. Master-in-bond movements, which are exempted from the red ball seal requirement, primarily are carried out by larger carriers with big volumes of inland-destination cargoes and sophisticated intermodal transportation systems.

The red-ball seal program "is causing a lot of problems for anyone who hasn't been approved for the Customs master IT (immediate transportation) program," said Lee Johnson, Customs Committee chairperson for the Puget Sound Steamship Operators Association.

In the case of one container carrier, at which Johnson is employed, the line is paying about $1,000 per vessel arrival to have about 100 containers red ball sealed at night so that inland-destination imports will not be delayed, she said.

A few years ago, Customs abandoned the red ball seal requirement because of reductions in Customs personnel and shipping industry concerns over how these cutbacks would harm import service unless the agency were to streamline its operations.

When customs had this requirement earlier, import cargo volumes were smaller than now is the case and inspectors were assigned fulltime to container terminals. Effective at the beginning of this year, Customs moved its Seattle inspectors into a central office location and provides inspection on most of the docks only on a roving basis during the day.

The combination of greater cargo volume, a further reduction in Customs personnel and the centralization of Customs inspectors has created a much more difficult situation during resurrection of the red ball seal requirement than was the case when the program previously was in effect.

Implementation of the red ball seal program has occurred ✓ just when it appeared that shippers through Seattle and Tacoma would get some relief from a chronic shortage of Customs personnel that has plagued the Seattle District of Customs.

Twenty new positions in the Seattle District, which includes Canadian border coverage, are being phased in this fall. But the extra inspector workload created by the red ball seal requirement will negate inspector position gains being applied to waterfront work, Johnson said.

Even with a net increase in 20 positions in the Seattle District, there would have been a continued shortage of Customs personnel, She said. The ports of Seattle and Tacoma, as well as certain ports in California and elsewhere, have been adversely affected by the budget-cutting reductions in Customs personnel because of rapid growth of import traffic at these ports. While cargo volumes have soared on Puget Sound, the actual number of inspectors has declined.

On a national as well as local basis, Customs has made a number of changes aimed at increasing overall efficiency and productivity. But the red ball seal program runs counter to that trend.

In defense of Customs, it is said that resurrection of the old rule is necessary to help plug the flow of contraband drugs and to ensure enforcement of import duties and quotas. The red ball seal program helps prevent, for instance, an importer from tampering with the contents of a container so as to escape a high duty or a quota on a particular commodity.

But there is another suspected reason for the new red ball rule, according to Johnson. She said it is believed that the new procedure is designed to discourage inland-points-of-destination clearance of containerized cargoes being transported in-bond through ports of entry.

Although Customs officials have denied the allegation, many representatives of the steamship industry view the new regulation as a means of further reducing Customs personnel at smaller interior cities. By making it necessary to clear more cargo at ports of entry, Customs is able to make additional cuts in personnel, Johnson said.

The red ball rule is in direct conflict with the industry trend toward more intermodal movement of containerized cargoes, she observed.

"I see that as a major problem," she said. "Steamship lines are offering customers faster and better service and they are spending millions of dollars on intermodalism. At the same time, Customs is trying to eliminate in-bond moves as much as possible."

What all of this means for the local maritime community is that Customs-caused delays in moving imports inland could make it tougher for ports here to compete with certain other port regions.

Although all ports and their customers are in the same red ball boat, so to speak, the adverse impact could be greater on Puget Sound because container ports here depend primarily on intermodal traffic. Seventy-five to 80% of containerized Asian imports flowing to Seattle and Tacoma are destined for points east of the Rockies rather than for Northwest or local markets.

"Our competitive edge here is that the vessels get here sooner (because of the Great Circle route) and we can move the cargo out sooner" due to less port congestion and more efficient inland transportation services, Johnson said.

Anything — including the red ball seal rule — that slows the transfer of cargo from ship to rail or truck could jeopardize that competitive edge, it is feared.

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Puget Sound Business Journal

Luxury lingerie makes smashing comeback
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Old customs rule creating new hassles

By Pamela Haley 9-26-85

Washington state's congressional delegation is examining a controversial customs inspection rule reinstated this month that is causing expensive delays in shipping cargo inland from Puget Sound ports.

The U.S. Customs Service resurrected a rule Aug. 1 that had been discontinued six years ago because of customs employee cutbacks. The rule requires that in-bond container shipments — imports normally not inspected until they reach their destination — be sealed at the port of entry in the presence of a customs inspector. The seal can be removed only at the final destination in the presence of another inspector.

The precaution was taken because customs found that some in-bond shipments were being tampered with between the point of entry and the final clearance through customs at inland cities, says Tom Coleman, chief customs inspector in Seattle. The rule is part of a continuing trend to tighten customs procedures.

The ports of Seattle and Tacoma, along with some steamship operators, are complaining that the reinstated rule — informally called the "red ball seal" regulation because of the prominent labels affixed to containers — is straining still-strapped customs resources and ultimately shifting the burden to the customer. Some even contend the move is prompted in part by a customs intention eventually to have only coastal port customs clearance and to eliminate inland inspectors.

"It's been an enormous problem in paperwork and keeping things straight," says Judy Metz of the Port of Tacoma's customer services department. "The operator has to make an extra stop to pick up the customs inspector for him to attach the seal. And it can take an additional hour and a half while the trains are held up for his inspection.

"The delays can mean more evenings of work and then you have to hire a customs inspector to work overtime. And if a driver hasn't completed every step of the procedure just so, he has to go through it all over again

continued on page 17

South Lake Union plan: from traffic to tech

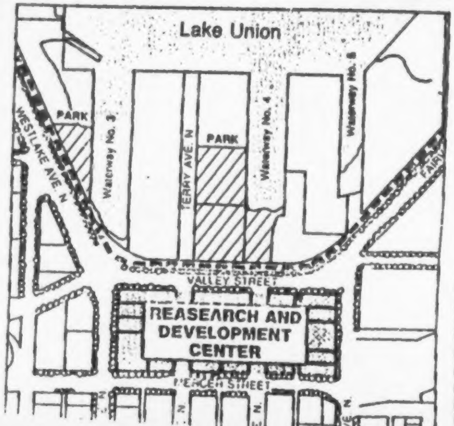
By Wendy Jolonen

Watch out, Technology Corridor. On your toes, Interstate-90. The next center of high-technology development could well be South Lake Union.

Picturing the latest software/biotechnology/data communications company setting up shop in an area better known for traffic jams and dilapidated warehouses might be hard now.

But the city of Seattle is putting together a land use and transportation plan that proposes to turn part of this blighted area into a research and development center, spurring a cluster of high-tech activity. Business leaders are already meeting to talk over just such an idea.

Turning the Mercer Corridor into downtown's version of the Technology Corridor, however, will involve about six years of [illegible] The idea is now one of several



INSIDE

SEATTLE'S HORIZON AIR this week steps into a bigger competitive fray, starting jet service between the Tri-Cities and San Francisco. But one part of Horizon's strategy — taking over regional rival Cascade Airways — became clouded last week with the bankruptcy filing of the Spokane airline.

Page 7

WESTSIDE BANKCORP.'S financial quagmire deepened last week, forcing federal regulators to look for a new merger partner for the troubled thrift. News of Westside's latest large loss also touched off fresh concern about the fate of the Washington State Convention and Trade Center, for which Westside is the chief lender.

Page 3

WASHINGTON ENERGY CO.'S diversification push now extends to Hawaii. A subsidiary of the Seattle-based gas distribution company recently kicked money in to back construction of a bio-waste plant outside Honolulu that will turn cow and chicken wastes into electricity, fertilizer and animal feed.

Page 8

TWO NEW FORMS OF insurance could ease the problems some businesses are having trying to find liability insurance at an affordable price. The new policies should appear next year and be quite popular

CUSTOMS

continued from page 1

from the beginning — some delays have lasted up to four days."

Seattle steamship operators have complained of extra costs of $1,000 per day due to overtime seal rule expenditures to get cargo to ports such as Chicago and New York.

Rep. Norm Dicks has talked with customs district inspectors in Los Angeles about the problem, says aide George Behan, but the congressman has not yet decided whether action will be taken.

Sen. Slade Gorton has written U.S. Customs Commissioner William von Raab in Washington, D.C., asking him to meet with some of Gorton's constituents, says legislative aide John Walls.

"I don't think anyone is going to introduce a bill outlawing the red seal rule," says Walls. "After all, customs has legitimate concerns and has its job to do, but we do think something might be worked out."

Agrees Ed Kittredge, public affairs spokesman for customs, "We're stuck between trying to facilitate trade and enforce the law. That puts us in a very difficult position.

"Cargo traveling under bond offers a lot of opportunities to do funny business, such as drugs. Customs has the historical authority to inspect all cargo."

But some local port and business representatives aren't buying the method.

"They certainly have the right to inspect containers for drugs or other illegal activity," says Ed McKinnon, executive for busy services at the Port of Seattle. "And putting the red ball seal on is no big deal in itself. But the rule was discontinued years ago and back then they had on-dock inspectors. Now the Seattle customs inspectors come by only once or twice a day at 8:30 a.m. and 1:30 p.m. and that means the port officials and terminal operators have to take their time to compensate."

Elaborates Hal Schuyler, president of the Puget Sound Steamship Operators Association, "Sometimes the longshore lift operator has to be there if the container the inspector wants to put a seal on is stacked from the bottom of a stack. And the longshore checker has to be there all the time."

The rule has prompted some operators to spread single-stacked containers around a yard — an expensive use of space.

"The irony is that the commissioner supposedly is trying to streamline customs now by adding new inspectors and all — but this rule just cancels that out, and returns us to the same old system of years ago," Schuyler says.

Customs expects to begin adding the new inspectors promised in the federal budget within two weeks, says Bob Hardy, district director for Seattle. Seattle will add five inspectors, Tacoma three and Oroville two, he says. Blaine should receive five.

Some steamship operators grumble that the staff additions will occur just when layoffs of summer part-time help begin, but Hardy says customs is overhauling its system of hiring part-time staff so that this will not happen in the future.

Schuyler, who works for Sea-Land Container Services in Tacoma, emphasizes that it is not the large steamship operators such as his own company that suffer under the seal rule.

Master in-bonds (two or more containers moving en masse to a single location at once) are exempted, explains the Seattle port's McKinnon. It is the single container that is not exempted and requires immediate sealing and transportation, he says, estimating that 10 percent to 15 percent of all cargo through Seattle could be affected by the new rule. McKinnon says Seattle handles 13 percent of the country's in-bond cargo.

Some officials even believe customs has a hidden motive in the red seal rule.

"Commissioner von Raab has wanted to cut down on the inland port inspectors for at least a year," says McKinnon. "If you create enough hardship — with things like the seal rule — the industry won't ship containers to inland port clearance points.

"They'll start checking their cargo through customs on the coasts to avoid further contact with customs problems — there won't be any red ball seals here or inland."

The steamship operators association's Schuyler and the Tacoma port's Metz agree.

"My feeling is that customs is trying to pull inspectors at the inland ports," Metz says. She notes that sometimes nearly one-half of a vessel's cargo is heading inland.

Customs officials in Washington, D.C., deny the allegations.

"We get accused of everything, including that," says customs' Kittredge.

Seattle port director Jim Dwyer on Aug. 15 wrote to von Raab to protest the rule, says McKinnon.

"The Port of Seattle is concerned about cargo delays and financial hardships that have occurred since implementation of the red ball program," Dwyer wrote, calling the result "unfortunate and disruptive."

Dwyer reminded von Raab in the letter that the port staff has invested in a computer for customs' use until the national customs computer is available here, and that the port remodeled a port building for use by customs inspectors beginning last January.

"In view of the severe shortage of customs inspectors, we are somewhat confused by the untimely action of the policy change," the letter continued.

Officials from both ports last week met with customs director Hardy, who says he [illegible] the program.

"We're all in a learning curve pattern and will find out what works," he says.

J. Ronald Brinson, president of the American Association of Port Authorities in Washington, D.C., expresses hope that the new rule at least would be standardized.

"We realize it as being subject to the interpretation of individual district customs officials and therefore not uniformly applied," says Brinson. "Some officials enforce it to the letter, while some exempt rail by looking only at containers going on trucks."

Customs' goal is to standardize the procedure, say Seattle and D.C. officials. ■

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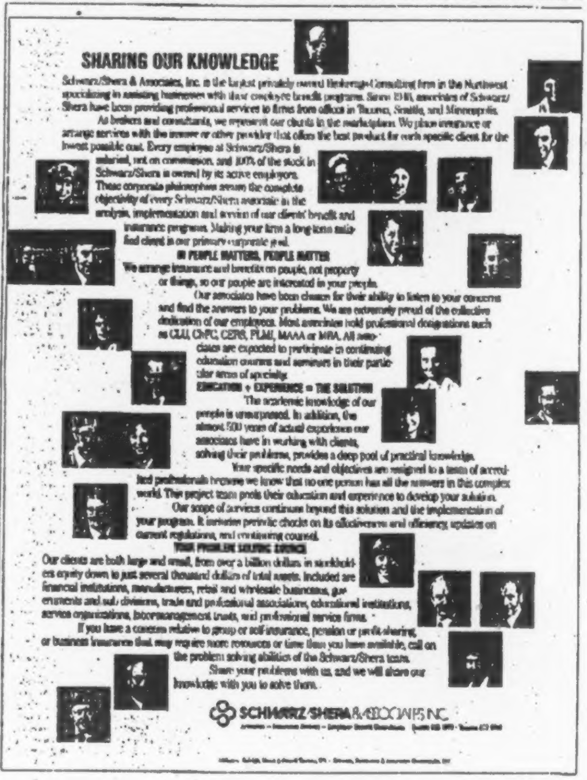
move the ships out of the harbor could further delay an already lengthy process.

When asked about At-Sea Incineration's potential at the annual meeting, Stanfield said the subsidiary could provide the company with much needed revenues and diversification in the long term. But because of the regulatory hurdles remaining, he said the specialty ships would not ease the company's current financial crunch.

Because of their long-term potential, however, Stanfield said the company had dropped its earlier plans to sell off the subsidiary. Whether the lawsuit filed by GE would change those plans wasn't clear last week.

Tacoma Boat, which laid off 600 of its about 1,400 employees last month, makes commercial and military vessels for governments and corporations. ■



SHARING OUR KNOWLEDGE

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[illegible]

[illegible]

Chairman PICKLE. My point is, you weren't following the procedure and you said because you didn't have time. You changed your procedure only after the trade community complained strongly that they were costing them thousands of dollars. It seems to me like if you are going to implement a new program, though you say it is an old one, you ought to go to the trade community and tell them what you want to do.

Mr. VON RAAB. Mr. Chairman, I agree. We were faced with a typical Customs dilemma here. We were deluged by the United States House of Representatives and the U.S. Senate for effective enforcement of our textile laws.

The lack of sealing of containers coming from the Far East was causing an absolute hemorrhage of illegal textiles to enter the U.S. because they knew of these weaknesses that we had.

In response to this Congress, certainly in large part of it, we responded with a tougher enforcement program. Having done that, we did receive obviously an adverse reaction to the transportation companies that effected.

Having received that reaction, we did respond by accepting their high security seals as a way to make the program acceptable both to those Members of Congress who were concerned with violations that were taking place as well as the transportation industry with whom we wanted to work closely.

Chairman PICKLE. Mr. von Raab, you are saying you put that directive into force immediately because Members of Congress wanted you to do that and not talk to the trade community and not discuss with them or try to find a better procedure that you outlined yourself as your steps.

You put that in because you said Congress put the heat on you. That is why you did it?

Mr. VON RAAB. There is no question that Congress put the heat on us.

Chairman PICKLE. Did Congress tell you to violate your procedure?

Mr. VON RAAB. That letter is not a set of procedures.

Chairman PICKLE. Let me go on because I don't want to—I sound like I am trying to argue with you, but to say you put in a new procedure and it really was an old procedure and you need not give them any kind of notice. It didn't work correctly. You changed your procedure and you went back to allowing the seal to be put on it.

You didn't have the inspectors and you couldn't enforce it. It would have been better if you brought the trade community in for consultation at the beginning of your directive instead of after words. We can hammer this one all day.

Another question. Let me go to the discussion of weighing of textiles in shipments. I know that many items are subject to quota and they are controlled by weight, not by count. I know some of those standards are set by USTR. Does Customs have standard procedures for weighing textiles and wearing apparel?

Mr. LANE. Yes, Mr. Chairman, we do. We have two procedures for that. One is a field procedure by inspectors in which we have issued scales to the inspector so they can make an on-site determination of over weight and, secondly, we have lab standards and procedures that are consistent with the American Society of Textile Manufacturers and that those scales and weighing procedures are much more detailed and accurate.

Chairman PICKLE. Well, now, Mr. Lane, do you have those procedures in writing?

Mr. LANE. Well, the lab procedures, yes, we do.

Chairman PICKLE. I beg your pardon?

Mr. LANE. The lab procedures, yes, sir, they are in writing.

Chairman PICKLE. The last procedure?

Mr. LANE. The lab, Customs laboratory. They are more elaborate.

Chairman PICKLE. Our committee asked you to submit to us your procedure you followed in weighing these textiles and we have not received that procedure yet in writing. Are you going to submit it to us, if you have one?

Mr. LANE. Yes, sir.

Chairman PICKLE. When are you going to do it? We asked you for this several weeks ago.

Mr. LANE. We will do that this week.

Chairman PICKLE. This week. Here again——

Mr. LANE. I am sorry.

[The following information was subsequently received:]

UNITED STATES GOVERNMENT
Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: **September 30, 1988**

FILE: **ENF-1-IC:I FWK**

TO : See Distribution

FROM : Deputy Commissioner of Customs

SUBJECT: Guidelines for Weighing Textiles

In the face of growing complaints from the domestic textile industry, the United States has entered into a number of bilateral trade agreements with the governments of textile producing countries. These agreements limit the quantity of textile products which a foreign country can export to the United States by means of a system of visas. The United States Customs Service, as the enforcement arm for trade legislation, is responsible for and committed to the enforcement of these agreements and the protection of our domestic industry.

As a number of the visa agreements deal in terms of weight, it has become an increasing concern of the Customs Service that accurate weights be taken on visa-by-weight shipments to ensure the accuracy of the visa information. While this information has been distributed in the past in training seminars and special operations guidelines, there has never been a single document detailing the methods for obtaining accurate field weights on textiles. The attached guidelines, prepared by the Office of Laboratories and Scientific Services at the request of the Office of Inspection and Control, are intended to fill the need, both for Customs field officers and members of the importing community, for a single reference for obtaining field weights on visaed textile shipments. Upon completion of technical adjustments to assure compatibility with the Harmonized System, these guidelines will be incorporated into a Customs Directive. This document will serve as interim guidelines pending the issuance of the Directive.

Michael H. Lane

Attachment

Distribution:

All Regional Commissioners
All District Directors
All Area Directors
All Port Directors
All Laboratory Directors

INSTRUCTIONS FOR WEIGHING TEXTILE COMMODITIES

THESE GUIDELINES DEAL WITH WEIGHING PROCEDURES FOR THE VERIFICATION OF THE VISA WEIGHT OF TEXTILE IMPORTATIONS. THEY COVER GARMENTS (SWIM TRUNKS, COVERALLS, ETC.) AND ARTICLES (BASEBALL CAPS, KNAPSACKS, ETC.) THAT ARE VISAED BY WEIGHT.

IN ALL CASES THE VISA WEIGHT SHALL BE VERIFIED BY TAKING THE "NET-NET" WEIGHT OF THE COMMODITY.

THE "NET-NET" WEIGHT OF A GARMENT OR ARTICLE IS THE WEIGHT OF THE ITEM AS WORN OR AS USED.

PACKAGING MATERIALS SUCH AS PLASTIC WRAPPERS, TISSUE PAPER, CARDBOARD, PINS AND HANG TAGS ARE NOT TO BE INCLUDED IN "NET-NET" WEIGHT DETERMINATIONS. SOME ATTACHMENTS, WHEN CLASSIFIABLE AS PART OF THE WHOLE ARTICLE, ARE TO BE INCLUDED IN THE WEIGHT, WHETHER THEY ARE MADE OF TEXTILES OR OTHER MATERIALS OR A COMBINATION THEREOF. SOME EXAMPLES INCLUDE, BUT ARE NOT LIMITED TO, SHOULDER STRAPS WITH METAL HOOKS ON KNAPSACKS, PAPER LABELS ON MESH BAGS, REMOVABLE ITEMS ATTACHED BY VELCRO/SNAPS/ETC., WHEELS, METAL HINGES AND PULL STRAPS ON LUGGAGE, PLASTIC OR METAL ZIPPERS. OTHER EXAMPLES OF ITEMS TO BE INCLUDED IN THE (NET-NET) WEIGHT DETERMINATION ARE:

TENTS - POLES, STAKES, ROPES, FLOORING, CARRYING CASE, ETC., PLUS THE TENT ITSELF.

PICNIC BASKETS - BOTTLES, PLATES, FLATWARE, ETC., PLUS THE BASKET ITSELF.

WALLETS - PHOTO AND CREDIT CARD HOLDERS, ETC., PLUS THE WALLET ITSELF.

ON-SITE WEIGHT VERIFICATION INSTRUCTIONS

1. VERIFY THE LANDED QUANTITY (NUMBER OF ITEMS) OF THE TEXTILE PRODUCT BEING EXAMINED.

2. SEPARATE A SUFFICIENT NUMBER OF REPRESENTATIVE SAMPLES (GENERALLY FOUR OR MORE) FROM THE IMPORTATION ACCORDING TO SIZE, COLOR, STYLE, FIBER COMPOSITION, ETC.

3. WEIGH THE SAMPLES ACCORDING TO ONE OF THE FOLLOWING APPROACHES:

   DIRECT WEIGHT APPROACH: REMOVE ALL PACKAGING MATERIALS, E.G., PLASTIC WRAPPERS/BAGS, TISSUE PAPER, CARDBOARD, PINS, HANGERS, HANG TAGS, ETC., FROM AT LEAST FOUR RANDOMLY SELECTED REPRESENTATIVE SAMPLES. WEIGH THE SAMPLES, ITEMS WITHIN THE SAME GROUP DO NOT HAVE TO BE WEIGHED INDIVIDUALLY.

TARE WEIGHT APPROACH: WEIGH AT LEAST FOUR RANDOMLY SELECTED REPRESENTATIVE SAMPLES OF EACH GROUP. ITEMS WITHIN THE SAME GROUP DO NOT HAVE TO BE WEIGHED INDIVIDUALLY. REMOVE THE PACKAGING MATERIALS FROM ONE OF THE SAMPLES. WEIGH THE PACKAGING MATERIALS. (THIS WEIGHT IS KNOWN AS A TARE WEIGHT.) THE TARE WEIGHT IS USED TO SUBTRACT THE WEIGHT OF THE PACKAGING MATERIALS WHEN CALCULATING THE NET-WEIGHT OF AN INDIVIDUAL ITEM (SEE EXAMPLE 1).

4. BASED ON THE INDIVIDUAL ITEM WEIGHT, CALCULATE A WEIGHT FOR THE SHIPMENT (NET-NET WEIGHT).

5. COMPARE THE CALCULATED WEIGHT OF THE SHIPMENT TO THE INVOICED/VISA WEIGHT.

6. DELIVERY OF THE SHIPMENT SHOULD BE AUTHORIZED IF THE CALCULATED WEIGHT IS LESS THAN OR EQUAL TO THE INVOICED/VISA WEIGHT.

7. PROCEED AS FOLLOWS IF THE CALCULATED WEIGHT IN (4) ABOVE IS GREATER THAN THE INVOICED/VISA WEIGHT.

   A. SEND THE SAMPLES THAT WERE WEIGHED TO YOUR SERVICING LABORATORY FOR WEIGHT VERIFICATION IN ACCORDANCE WITH LOCAL PROCEDURES, MAKING CERTAIN THAT A COPY OF THE NOTICE OF SAMPLE IS SENT TO THE APPROPRIATE CST AND IST. IN NO CASE SHOULD A TOTAL OF LESS THAN 12 SAMPLES BE SUBMITTED TO THE LABORATORY.

   B. REFER TO THE APPROPRIATE CUSTOMS DIRECTIVES AND TELEXES SUCH AS THOSE LISTED BELOW, FOR INFORMATION CONCERNING CUSTOMS TREATMENT OF OVERWEIGHT IMPORTATIONS.

   - DIRECTIVE NUMBER 4400-07, DATED 1-26-88, ENTITLED GUIDELINES FOR SEIZURES AND PENALTIES UNDER 19 U.S.C. 1592 AND U.S.C. 1595A(B)(C).

   - UNCLASSIFIED CUSTOMS TELEX 011866, DATED 12-6-85.

   - UNCLASSIFIED CUSTOMS TELEX 0092, DATED 1-6-86.

   - VBT-88-60, VISA OVERWEIGHTS, TELEX #07789 DATED 6/14/88.

8. CALL YOUR SERVICING LABORATORY IF YOU NEED ADDITIONAL GUIDANCE IN THE WEIGHING OF TEXTILE IMPORTATIONS.

EXAMPLE #1

DOCUMENTATION:

AN INVOICE IS FOR 500 KNAPSACKS. ALL OF THE KNAPSACKS ARE DECLARED AS BEING OF THE SAME SIZE, COLOR AND FIBER COMPOSITION. THEY APPEAR ON ONE LINE OF THE INVOICE AND/OR CF 7501. THE INVOICED AND VISA WEIGHT FOR ALL 500 KNAPSACKS IS 1850 LBS.

ACTION:

1. VERIFY THE LANDED QUANTITY OF KNAPSACKS.
2. RANDOMLY SELECT ABOUT 12 OF THE KNAPSACKS FROM THEIR SINGLE OR MULTIPLE CONTAINERS.
3. VERIFY THAT THE SIZE, COLOR AND LABELED FIBER COMPOSITION ARE THE SAME AND COMPARE WITH THE INVOICED DESCRIPTIONS.
4. WEIGH THE KNAPSACKS (12) ON THE APPROPRIATE, CALIBRATED SCALE.
5. RECORD THE WEIGHT.
6. REMOVE PACKAGING MATERIALS FROM ONE OF THE 12 KNAPSACKS, E.G., TISSUE PAPER, CARDBOARD, ETC., INSIDE THE KNAPSACK.
7. WEIGH THE PACKAGING MATERIALS.
8. RECORD THE WEIGHT.
9. CALCULATE A NET-NET WEIGHT FOR THE SHIPMENT.

RESULTS:

1. WEIGHT OF 12 KNAPSACKS WITH PACKAGING = 48 LBS
2. THEREFORE, 1 KNAPSACK WITH PACKAGING WEIGHS 4 LBS
3. WEIGHT OF THE PACKAGING MATERIAL = 0.4 LB.
4. THUS THE NET-NET WEIGHT OF 1 KNAPSACK IS (4-0.4) = 3.6 LBS
5. THEREFORE, 500 KNAPSACKS WEIGH (3.6 LBS X 500) = 1800 LBS
4. THE CALCULATED NET-NET WEIGHT OF THE SHIPMENT IS LESS THAN THE INVOICED/VISA WEIGHT.
5. IF THERE ARE NO OTHER REASONS FOR DETENTION OR SEIZURE, E.G. MARKING VIOLATIONS, DELIVERY OF THE SHIPMENT SHOULD BE AUTHORIZED BECAUSE THE CALCULATED NET-NET WEIGHT IS LESS THAN THE INVOICED/VISA WEIGHT.

EXAMPLE #2

DOCUMENTATION:

AN INVOICE IS FOR 1000 WOMEN'S COVERALLS. THE INVOICE AND/OR CF 7501 SHOW THAT THERE ARE FOUR SIZES (PETITE, SMALL, MEDIUM, LARGE), AND THAT THEY ARE ALL OF THE SAME STYLE AND FIBER COMPOSITION. EACH SIZE OF COVERALL APPEARS ON SEPARATE INVOICE/CF 7501 LINES, AND EACH HAS ITS OWN DECLARED WEIGHT AS FOLLOWS:

QUANTITY	SIZE	WEIGHT
250	LARGE	860 LBS
250	MEDIUM	755
250	SMALL	665
250	PETITE	560

THE INVOICED/VISA WEIGHT FOR ALL 1,000 COVERALLS IS 2,840 POUNDS.

ACTION:

1. VERIFY THE LANDED QUANTITY (NUMBER) OF COVERALLS.

2. YOU FIND THAT EACH SIZE OF COVERALL COMES IN FIVE DIFFERENT COLORS AND THAT ALL OF THEM ARE LABELED AS HAVING THE SAME FIBER COMPOSITION.

3. YOU FIND THAT THE COLORS ARE SYSTEMATICALLY DISTRIBUTED AMONG THE DIFFERENT SIZES. IN OTHER WORDS, THERE ARE 35 BLUE, 40 GREEN, 50 VIOLET, 55 YELLOW AND 70 PINK COVERALLS WITHIN EACH SIZE. RANDOMLY SELECT AND SEGREGATE TWO COVERALLS OF EACH SIZE AND COLOR. THERE SHOULD BE 20 GROUPINGS OF 2 COVERALLS, I.E.

LARGE					MEDIUM					SMALL					PETITE				
B	G	V	Y	P	B	G	V	Y	P	B	G	V	Y	P	B	G	V	Y	P

4. REMOVE PACKAGING MATERIALS FROM THE COVERALLS.

5. WEIGH EACH GROUP OF SAMPLES ON THE APPROPRIATE, CALIBRATED SCALES.

6. RECORD THE WEIGHT.

7. CALCULATE A NET-NET WEIGHT PER COVERALL FOR EACH GROUP.

8. CALCULATE THE NET-NET WEIGHT FOR THE SHIPMENT.

RESULTS:

1. WEIGHTS AND CALCULATION OF NET-NET WEIGHT PER COVERALL: [NOTE: ALL WEIGHTS ARE MEASURED IN POUNDS.]

ID		WEIGHT	WT/COVERALL
LARGE	B	7.8 LBS	3.90 LBS
	G	7.3	3.65
	V	7.2	3.60
	Y	7.3	3.65
	P	7.1	3.55
MEDIUM	B	6.8	3.40
	G	6.5	3.25
	V	6.4	3.20
	Y	6.5	3.25
	Y	6.3	3.15
	P	6.3	3.15
SMALL	B	5.9	2.95
	G	5.6	2.80
	V	5.5	2.75
	Y	5.6	2.80
	P	5.4	2.70
PETITE	B	5.1	2.55
	G	4.9	2.45
	V	4.8	2.40
	Y	4.9	2.45
	P	4.7	2.35

2. CALCULATE THE WEIGHT OF THE SHIPMENT:

ID		WT/COVERALL	# COVERALLS	WT/GROUP
LARGE	B	3.90 LBS	35	136.5 LBS
	G	3.65	40	146.0
	V	3.60	50	180.0
	Y	3.65	55	200.8
	P	3.55	70	248.5
MEDIUM	B	3.40	35	119.0
	G	3.25	40	130.0
	V	3.20	50	160.0
	Y	3.25	55	178.8
	P	3.15	70	220.5
SMALL	B	2.95	35	103.3
	G	2.80	40	112.0
	V	2.75	50	137.5
	Y	2.80	55	154.0
	P	2.70	70	189.0
PETITE	B	2.55	35	89.3
	G	2.45	40	98.0
	V	2.40	50	120.0
	Y	2.45	55	134.8
	P	2.35	70	164.5
		TOTALS	1,000	3,022.5 LBS

4. THE CALCULATED NET-NET WEIGHT OF THE SHIPMENT IS GREATER THAN THE INVOICED/VISA WEIGHT (6.4 PERCENT).

5. SEND THE SAME SAMPLES THAT WERE WEIGHED TO THE FIELD LABORATORY, I.E., 40 SAMPLES IN ALL, FOR FURTHER WEIGHT VERIFICATION. IN ACCORDANCE WITH LOCAL PROCEDURES, AND MAKING SURE THAT A COPY OF THE NOTICE OF SAMPLE IS SENT TO THE APPROPRIATE CST AND IST.

EXAMPLE #3

DOCUMENTATION:

AN INVOICE IS FOR 1080 SWIM TRUNKS. THE SWIM TRUNKS ARE ALL OF THE SAME CONSTRUCTION AND FIBER COMPOSITION. THE INVOICE AND/OR CF 7501 SHOW THE FOLLOWING DECLARED WEIGHT BREAKOUTS:

STYLE	QUANTITY	SIZE	WEIGHT
AA	90	S	36 LBS
45 DZ	180	M	90 "
	180	L	108 "
	90	XL	63 "
TOTALS	540		297 LBS
BB	50	S	30 LBS
25 DZ	100	M	70 "
	100	L	80 "
	50	XL	45 "
TOTALS	300		225 LBS
CC	40	S	20 LBS
20 DZ	80	M	48 "
	80	L	56 "
	40	XL	32 "
TOTALS	240		156 LBS

THE INVOICED/VISA WEIGHT FOR ALL 90 DOZEN (1080) SWIM TRUNKS IS 678 POUNDS.

ACTION:

1. VERIFY THE LANDED QUANTITY (COUNT) OF THE SWIM TRUNKS.

2. YOU FIND THAT THE SWIM TRUNKS ARE BOXED BY STYLE. EACH BOX CONTAINS 4 DIFFERENT SIZES PACKAGED AS 2 SMALL, 4 MEDIUM, 4 LARGE AND 2 EXTRA LARGE. STYLE AA ARE RED, BB ARE BLUE, AND CC ARE YELLOW BUT THE COLORS ARE NOT MIXED WITHIN A PARTICULAR STYLE. LABELING INDICATES THAT ALL OF THE GARMENTS ARE OF THE SAME FIBER COMPOSITION.

3. RANDOMLY SELECT 2 BOXES OF EACH STYLE.

4. SEPARATE THE STYLES BY SIZE.

5. THERE SHOULD NOW BE 12 PILES OF SWIM TRUNKS. EACH STYLE SHOULD HAVE 4 PILES. THE PILES FOR THE SMALL AND EXTRA LARGE SIZES SHOULD CONTAIN 4 SWIM TRUNKS EACH. PILES FOR THE MEDIUM AND LARGE SIZES SHOULD CONTAIN 8 SWIM TRUNKS EACH.

- FOR EACH PILE, REMOVE ANY PACKAGING, HANG TAGS, ETC., ATTACHED TO 2 RANDOMLY SELECTED SWIM TRUNKS.

- WEIGH EACH OF THE GROUPS (OF 2) SEPARATELY ON THE APPROPRIATE, CALIBRATED SCALES.

3. CALCULATE A NET-NET WEIGHT FOR THE SHIPMENT.

RESULTS:

1. WEIGHING SCHEME AND CALCULATIONS FOR THE SHIPMENT:

STYLE AA:
2 X S = (0.90 LBS./2) X 90 SWIM TRUNKS = 40.5 LBS.
2 X M = (1.05 LBS./2) X 180 " = 94.5 LBS.
2 X L = (1.20 LBS./2) X 180 " = 108.0 LBS.
2 X XL = (1.50 LBS./2) X 90 " = 67.5 LBS.
TOTALS 540 SWIM TRUNKS 310.5 LBS.

STYLE BB:
2 X S = (1.35 LBS./2) X 50 SWIM TRUNKS = 33.8 LBS.
2 X M = (1.55 LBS./2) X 100 " = 77.5 LBS.
2 X L = (1.65 LBS./2) X 100 " = 82.5 LBS.
2 X XL = (1.95 LBS./2) X 50 " = 48.8 LBS.
TOTALS 300 SWIM TRUNKS 242.6 LBS.

STYLE CC:
2 X S = (1.05 LBS./2) X 40 SWIM TRUNKS = 21.0 LBS.
2 X M = (1.20 LBS./2) X 80 " = 48.0 LBS.
2 X L = (1.55 LBS./2) X 80 " = 62.0 LBS.
2 X XL = (1.60 LBS./2) X 40 " = 32.0 LBS.
TOTALS 240 SWIM TRUNKS 163.0 LBS.

2. THE CALCULATED NET-NET WEIGHT OF THE SHIPMENT IS 716.1 LBS.

3. THE NET-NET WEIGHT OF THE SHIPMENT IS GREATER THAN THE INVOICED/VISA WEIGHT (5.6 PERCENT).

4. SEND THE SAME SAMPLES THAT WERE WEIGHED TO THE FIELD LABORATORY, I.E., 24 SAMPLES IN ALL, FOR FURTHER WEIGHT VERIFICATION. IN ACCORDANCE WITH LOCAL PROCEDURES, AND MAKING SURE THAT A COPY OF THE NOTICE OF SAMPLE IS SENT TO THE APPROPRIATE CST AND IST.

EXAMPLE #4

DOCUMENTATION:

AN INVOICE IS FOR 300 MEN'S SKI PANTS. THE INVOICE AND/OR CF 7501 SHOW THAT THERE ARE OF TWO SIZES (34, 36). EACH SIZE OF SKI PANTS APPEAR ON SEPARATE INVOICE/CF 7501 LINES, AND EACH HAS ITS OWN DECLARED WEIGHT AS FOLLOWS:

QUANTITY	SIZE	WEIGHT(LBS)
150	34	95
150	36	115

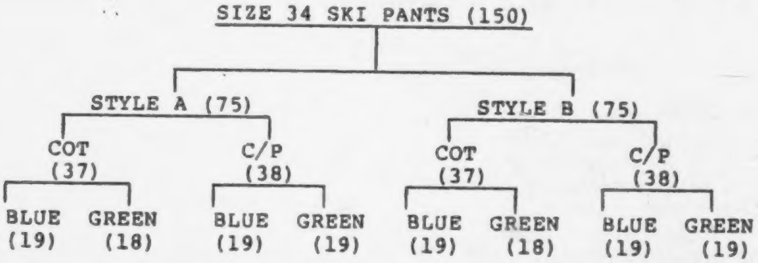
THE INVOICED/VISA WEIGHT FOR ALL 300 SKI PANTS IS 210 LBS.

ACTION:

1. VERIFY THE LANDED QUANTITY (COUNT) OF THE SKI PANTS.

2. YOU FIND THAT THERE ARE TWO DIFFERENT STYLES TO EACH SIZE; THAT EACH STYLE IS OF TWO DIFFERENT FIBER COMPOSITIONS; EACH GROUP OF FIBER COMPOSITIONS IS OF TWO DIFFERENT COLORS OF COTTON/POLYESTER.

3. SEGREGATE TWO PAIRS OF SKI PANTS OF EACH SIZE, STYLE, LABELED FABRIC COMPOSITION AND COLOR. THERE SHOULD NOW BE 8 SEPARATE PILES OF SKI PANTS PER SIZE. [NOTE: THE NUMBER IN PARENTHESIS REPRESENTS THE TOTAL NUMBER OF SKI PANTS IN THE GROUPING.]


SIZE 34 SKI PANTS (150)
STYLE A (75)
STYLE B (75)
COT (37)
C/P (38)
COT (37)
C/P (38)
BLUE (19)
GREEN (18)
BLUE (19)
GREEN (19)
BLUE (19)
GREEN (18)
BLUE (19)
GREEN (19)

8. REMOVE ANY PACKAGING MATERIALS, HANG TAGS, ETC. FROM EACH OF TWO (2) SKI PANTS RANDOMLY SELECTED FROM EACH OF THE DIFFERENT PILES.

9. WEIGH EACH GROUPING (2) OF SKI PANTS ON THE APPROPRIATE, CALIBRATED SCALES.

11. RECORD THE WEIGHT.

12. CALCULATE A NET-NET WEIGHT FOR EACH GROUP.

13. CALCULATE THE NET-NET WEIGHT FOR THE SHIPMENT.

RESULTS:

WEIGHING SCHEME AND CALCULATIONS FOR THE SHIPMENT:

SIZE 34:
2 X STYLE A, COTTON, BLUE = (1.3 LBS./2) X 19 PAIRS = 12.4 LBS.
2 X , GREEN = (1.4 LBS./2) X 18 " = 12.6 "
2 X ,COTTON/POLY , BLUE = (1.4 LBS./2) X 19 " = 13.3 "
2 X , GREEN = (1.5 LBS./2) X 19 " = 14.3 "
2 X STYLE B, COTTON, BLUE = (1.6 LBS./2) X 19 " = 15.2 "
2 X , GREEN = (1.6 LBS./2) X 18 " = 14.4 "
2 X ,COTTON/POLY , BLUE = (1.8 LBS./2) X 19 " = 17.1 "
2 X , GREEN = (1.8 LBS./2) X 19 " = 17.1 "
TOTALS 150 PAIRS 116.4 LBS.

SIZE 36:
2 X STYLE A, COTTON, BLUE = (1.8 LBS./2) X 19 PAIRS = 17.1 LBS.
2 X , GREEN = (1.9 LBS./2) X 18 " = 17.1 "
2 X ,COTTON/POLY , BLUE = (1.9 LBS./2) X 19 " = 18.1 "
2 X GREEN = (1.8 LBS./2) X 19 " = 17.1 "
2 X STYLE B, COTTON, BLUE = (2.0 LBS./2) X 19 " = 19.0 "
2 X , GREEN = (2.0 LBS./2) X 18 " = 18.0 "
2 X ,COTTON/POLY , BLUE = (1.9 LBS./2) X 19 " = 18.1 "
2 X , GREEN = (2.0 LBS./2) X 19 " = 19.0 "
TOTALS 150 PAIRS 143.5 LBS.

2. THE CALCULATED NET-NET WEIGHT OF THE SHIPMENT IS 259.9 LBS.

3. THE NET-NET WEIGHT OF THE SHIPMENT IS GREATER THAN THE INVOICED/VISA WEIGHT (23.8 PERCENT).

4. SEND THE SAME SAMPLES THAT WERE WEIGHED TO THE FIELD LABORATORY, I.E., 32 SAMPLES IN ALL, FOR FURTHER WEIGHT VERIFICATION. IN ACCORDANCE WITH LOCAL PROCEDURES, AND MAKING SURE THAT A COPY OF THE NOTICE OF SAMPLE IS SENT TO THE APPROPRIATE CST AND IST.

Chairman PICKLE. I don't know why you delayed about it. We asked you for that procedure. Now the Fingerhut Corporation testified on June 9 that Customs didn't identify any written procedure in response to their questions, and they have asked for it and you wouldn't give it to them. Do you deny that or are you familiar with that?

Mr. LANE. I am not familiar with that, Congressman, but we have several directives here that outline our procedures, and these issuances are CD 4400-7 put out January 26 or 28. There were two telexes following up on that.

Chairman PICKLE. I think the trade community wants the procedures out in the field. They don't seem to know that and can't get it from anybody. They don't know how to respond. There is a question about numbers and quotas versus the weight and it would be a problem.

You put out scales and I don't think that they have worked out too well. It seems to me like if you have got procedures for weighing textiles and wearing apparel, you would make them available if they asked for it.

Mr. LANE. I know people complain about that, Congressman, but there is a large community of textile importers that don't complain that do all of their own weighing on the Asian side, and are in complete compliance and have been since the institution of the weighing program. I think in those few instances where we have problems, when you look at the magnitude of textile importations, they have either been absolute violations or else we have been able to make concessions to facilitate the flow.

The field weighing procedures and their laboratory procedures have done that. We have also raised the threshold in here. So I think, you know, we have been conscious in dealing with these importers.

Chairman PICKLE. I am going to ask you to let us know what your field weighing procedures are. We don't have it and you did not give it to us. I hear what you are saying, but we don't have it. I am also going to put in the record at this point an article that appeared in the Journal of Commerce by David Palmeter. The article, "Is Customs Crime Data Misleading?". He goes on to make a point that the real crime problem in the U.S. is not the crime in the streets. It is crime on the docks. The culprits, Customs would have you believe, are importers, particularly textile importers, although steel and other imports aren't all that savory either. I ask that that go into the record.

[The information follows:]

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Customs' Crime Data Misleading

By N. DAVID PALMETER

A recent story in The Journal of Commerce reported a crime wave.

"Illegal Textile Imports 3 Times Higher in '87," the headline read. The story went on to report that seizures of fraudulent textile imports in fiscal year 1987 numbered 1,784 compared with only 510 the year before.

And you thought crime waves had to do with narcotics, robbery, murder or insider trading. You haven't been listening to your Customs Service.

The real crime problem in the United States is not crime in the streets or crime in the board rooms. It's crime on the docks. And the culprits, Customs would have us believe, are importers, particularly textile importers — although steel importers, we're told, aren't all that savory either.

If "illegal imports" this year are three times what they were last year, does this mean that importers have become three times more depraved? Or does it mean that the sleuths at Customs have become three times better? Or does it mean that someone, in the best Orwellian fashion, is playing games with the definitions of words like "illegal?"

Take a guess.

Seizures of "illegal" imports are triple what they were because the Customs Service is following a policy of harassment of importers for innocent errors in measurements that have no commercial significance whatsoever. It comes down to a question of quotas — quotas that are measured by the pound and by the ton.

Textile and apparel imports, of course, are subject to quotas. A country may export to the United States only so many dozen shirts, so many pairs of pants, so many yards of fabric. In order to enter this merchandise, an importer must present documents from the exporting country authorizing use of that country's quota for a specified quantity. If the documents authorize 1,000 dozen shirts, the importer had better not try to enter 1,001 dozen. Reasonable attention to detail should minimize most problems in this area.

But not all individual quotas are measured in units or pairs or dozens. Some are measured by weight — by the pound. And that is the source of the "crime wave."

When is the last time you bought a pound of neckties? Importers do so every day because the necktie quota is measured in pounds of ties, not in the number of ties.

Neckties aren't the only items subject to quotas by the pound. So are dust mops, bar mops, garter belts, silk brassiers, veils, judo uniforms, hats and baby clothes.

So how does all of this lead to a crime wave? Here's how.

Nobody manufactures, buys or sells neckties by the pound. But the quota is in terms of pounds. So the exporter, after receiving an order for 1,000 dozen ties, weighs them and sends the papers forward to the importer who presents them to Customs. The weight matches, and all's well.

Then comes another order for 1,000 dozen ties. But, while the number is the same, the product mix is different: The ties are wider or narrower or there are fewer or more bow ties in the lot. The exporter, nevertheless, reports the same weight used for the previous shipment of 1,000 dozen ties. Even if the product mix differs, the exporter reasons, the weight is close enough for any reasonable use; after all, it's a figure of no commercial significance, and the exporter has to pay extra every time goods are weighed.

Or the exporter actually weighs the ties and accurately reports the amount, but the goods absorb atmospheric moisture during shipment — a fairly common, but uncontrollable, occurrence.

The importer, who has had no practical chance to weigh the goods after arrival, presents documents to the Customs Service, including the exporter's declaration of weight which, it turns out, is off by a few percentage points because of the change in product mix.

What does Customs say to the importer?

Customs says, "Gotcha!"

The importer has just become a statistic — part of the crime wave. Using authority it claims to possess under the Anti-Drug Abuse Act of 1986, Customs accuses the importer of fraud and seizes the entire shipment. If the importer is lucky, the ties eventually will be released after payment of a stiff penalty.

This seizure policy is specifically aimed, by Customs Service headquarters directive, at imports of textiles and steel, which is the other major category of merchandise subject to quotas.

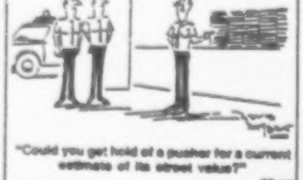
All steel import quotas are in terms of tons, and in many categories this causes no problems because the trade is done by weight. But in some important product areas, the trade is conducted in other terms, and in these areas the same problems arise as arise with neckties by the pound.

Pipe, tube and wire rope, for example, are sold by construction specification and dimensions — such as 1,000 feet of wire rope, one inch diameter — of a particular construction. No one really knows precisely how much such a rope weighs. No one in the trade cares.

But Customs cares.

So exporters and importers use theoretical weights, derived from the specifications themselves. These are accurate within specified tolerances. But if a particular shipment is at the extreme of the tolerances because, for example, there is more or less grease on the wire rope, or because it is cut a foot long or a foot short, Customs will pounce, press releases will fly and the agency will crow about how tough it is on criminals.

But this isn't toughness. This is harassment of honest firms trying to act responsibly and reasonably in an environment that [illegible] on intimidation. Not everyone, it is safe to say, would describe it as government at its best.



"Could you get hold of a pusher for a current estimate of its street value?"

N. David Palmeter is a partner in Mudge Rose Guthrie Alexander & Ferdon, Washington, which maintains a customs law practice.

Chairman PICKLE. If you have procedures, let us know what they are. Did the trade community have any hand in issuing procedures?

Mr. VON RAAB. Mr. Chairman, these procedures merely reflect what is in the law, and our regulations that were promulgated to support the law. This country has had a serious problem in the violations of its import laws by textile manufacturers outside of this country. The Customs Service has come to the support of our domestic industry to try, for the time through this program, to enforce some of our laws to protect our domestic industry against illegal practices by the foreign manufacturers. Whenever an organization does that, the people that either have been profiting from or living with some of these violations, in many cases unknowingly, are uncomfortable, because what happens is they have finally discovered that things that have been going on have been against the law.

In enforcing the law, there is not a question of negotiating as to whether you enforce a law with someone to whom that law applies. We are faced with that in many cases.

Chairman PICKLE. I will repeat again, if you have procedures with respect to the weighing of textiles and apparel, the trade community ought to know it. Fingerhut actually made out an order of procedure that they think their importers should use. They submitted it to you, showed exactly what they are asking of their people and tried to get a response from you and haven't heard anything yet.

What can an importer do when they tell us this is the procedure we tell our people to follow and you don't say that is good or accurate. It seems to me that you can give more information to them than you are doing.

I hope you would meet with Fingerhut and explain some of this.

I want to go back now to questions about your procedures and—I see that my time has expired. In keeping with the agreements we have, I am going to postpone my questions at this point and go to Mr. Schulze. I haven't quite got into this particular area, but I will come back to it.

Mr. Schulze.

Mr. SCHULZE. Thank you, Mr. Chairman.

Because of Mr. McGrath's time constraints, I am going to yield to him for a brief series of questions. If I have time left, I will come back. If not, I will wait to the next round of questions.

Chairman PICKLE. We recognize Mr. McGrath.

Mr. MCGRATH. Thank you, Mr. Chairman, and thank you, Mr. Schulze, for your kindness.

I know that the only personnel issue dealt with in your testimony was training. I agree training is extremely important, in light of the need for a knowledgeable commodity specialist and for those using various data processing systems. No discussion, however, was devoted to compensation and benefits. According to a GAO study, in New York, State and local jurisdictions and private industry pay between 33 and 70 percent more than the Federal Government.

Knowing that this is particularly true in the field of law enforcement and data processing, is Customs' ability to attract and retain competent workers being hampered by this compensation differential in the New York area?

Mr. von Raab. I have a somewhat conflicting answer to that. One is, I believe that the compensation in the New York area, as well as some other areas, is probably not appropriate and it probably—there should be some differential, because the wages paid there are not reflective of the cost of living there.

And I have always supported the efforts within the law enforcement community to in effect petition the Office of Personnel Management to recognize that we should have a different wage scale for New York and other places, as well.

So, yes, it probably should be a different wage scale. Fortunately, for the Customs Service, the Customs Service has an attractive enough environment, the people are enthusiastic about their jobs in Customs, in many cases, and as you well know, we have people who follow on in the Customs Service because their grandfather was in Customs or because their wife's brother is in Customs and good word has been passed among the community that it is a nice place to work, it is rewarding and interesting work.

So we have not had a problem hiring agents in New York because of the lower wage scales. We are very pleased with the quality of the men and women who have been applying for jobs as agents in New York. So we have been fortunate that the other advantages of working in Customs have been able to outweigh the fact that perhaps wages that are paid are not as high as they should be in New York.

So it is sort of a mixed bag.

Mr. McGrath. The second question I have regards the cargo selectivity process. Customs inspectors who testified before this subcommittee earlier this year painted a disturbing picture of the data base created for the cargo selectivity process or the program which determines which shipments are selected for physical examination by inspectors.

They stated much of the information was simply fabricated because earlier efforts to establish the data base failed to develop information compatible with the computer systems now in use.

This is an extremely serious charge since the enforcement scheme relies heavily on the selectivity program. Has any action been taken to investigate the situation and correct any deficiencies?

Mr. Lane. Congressman, I would like to answer that question. I think that certainly it is the case that our selectivity system is the most complicated of the most entire system. There has been a misperception among employees in regard to what happens in the building of that data base.

When we put in the selectivity system in ACS, we had in parallel our old system and we maintained those records in the system. Employees at the time believed that we were putting in wrong examination results on first time occurrences of this commodity entering the port of entry, because a first time importation requires an inspection.

When we first put up the system, every importation was a first-time occurrence. We had our choice there. We could have done an inspection on each commodity entering the port which would have disrupted the entire operation of the port or we could go back and look at the historic data in the old system and make our determination then, if that was a first time importer.

We chose the latter course. In effect, the data that was entered into the system was correct, but the employees at the time, I mean, technically you could say we were inputting improper information. That was not really the case.

Mr. McGRATH. Mr. von Raab, you mentioned the issue which has had a sore point with me. That is the centralized examination station, particularly the one at Kennedy Airport. You also mentioned the dispute that we had last year on that issue. Isn't it true that the CES shifts and added transportation burden results in a nontariff barrier since the importer must pay to bring goods to Customs. On the same subject, the major complaints that I received about the CES system at the JFK Airport regard the further delays and added storage charges substantially weighted by previous testimony by brokers and importers.

I know this system has great possibility but can you tell us what steps have been taken to address the complaints of the added financial burden and delay burden for the importers and brokers?

Mr. VON RAAB. The old system of inspecting goods at Kennedy Airport was for the Customs officer to leave his post and to drive out to a location at which the goods were held, and there to inspect the goods on the spot. This meant that Customs had to schedule its inspectors to a whole number of areas which were secured areas in which goods were held pending inspection.

This program was attempted to be changed in New York in which the Customs Service notified the importer of a requested inspection and asked for a portion of those goods to be delivered to a central examination station.

Not the entire shipment, but maybe two or three boxes out of 50. Those two or three boxes would be delivered to the central examination and then having been reviewed, the entire shipment would be released. In most cases, no inspection would take place and that the goods that were in the distant location would be released without inspection and it is only in those cases in which our automated system or some other inspector's feeling led us to request in effect an extract of goods from that shipment to be brought to the central examination station.

The trade objected to this because basically we have a lot of brokers who had basically long-standing friendships and relationships with Customs officers, and they were able to schedule examinations in such a way as to convenience themselves and in effect make them look like they could get goods out faster than another one because what happened is that the brokers in effect scheduled examinations and it was not on a first-come, first-serve basis.

What we did when we shifted to the central examination approach is that the Customs Service scheduled examination on a first-come, first-serve basis as opposed to a basis which was determined by brokers who had previously established alliances with particular Customs officers.

The brokers found this to be unacceptable because their previous ability to move certain goods more quickly than other brokers was effected by the Customs Service scheduling the inspections themselves.

In actual fact, the costs to the carriers was considerably reduced by this new system. Unfortunately, as a result of legislation passed, the central examination station in Kennedy Airport was prohibited by law and we have now gone back to a system in which we must send our inspectors across runways and around the airport in order to inspect goods.

The complaints that brokers now have is that Customs schedules the timing of these examinations and the brokers are incapable of having the inspectors come at their timing because the Customs Service believes that goods should be inspected on a first-come, first-serve basis, not on a basis of the old buddy system.

Mr. Kwas is here.

Mr. McGRATH. Mr. Kwas, the reason I gave you that opportunity to throw that softball at you so you can get an opportunity to respond to the complaints that I receive every day. Mr. Kwas.

Mr. KWAS. Congressman, one of the other benefits that we found from the CEF was from 1979 until its establishment in 1986, we were very limited on a number of new container stations that we can allow it to open outside of JFK Airport because of the need for the staffing to examine the merchandise.

So prior to your opening of the CCEF, we had 23 container stations. Having the examination problem solved from a central point of examination, we expanded those applications that now 36 container stations were opened and 18 more were pending which if they pass all of the prescribed investigations and procedures, will be open, so in essence, we will be helping business along from 23 container stations to 54 container stations at JFK.

Mr. McGRATH. I will be very happy to see that. Commissioner, the Wall Street Journal today has an article that says Customs classification codes confuse importers who cry Trivial Pursuit, and the first sentence is, "When is a sewing kit considered luggage, and are Duncan Hines muffin mix toppings really just sugar in disguise. Are theater seats for Mozart operas works of art?"

It goes on to say that you need to resolve these issues, but the answers to these issues vary with ports of entry. I would like you to address the issue of who makes the classifications on those various things and why in some cases, the results vary among different ports of entry. Shouldn't we have a consistent and logical code for all of these things?

Mr. VON RAAB. This is an issue that concerns us and and one of the results of automating our processes is to discover problems in our own organization because you then have a central data file which makes clear that you have a lot of shortcomings.

Without question, one of Customs' shortcomings is the lack of uniformity of a decision in one port on what something is versus a decision in another port.

We have taken that seriously and are crafting a scheme to correct that.

I would ask Mr. Mach to describe that to the committee.

Mr. MACH. The scheme that we have in mind and which we will implement on the first of January, which is the same type of thing to harmonize code, is one in which we will provide for the importer within 30 days in the vast majority of cases a binding classification.

That means that an importer or a broker could come into a district office and request a proper classification of any of those commodities you mention and within 30 days could expect an answer or could at least expect to know when he would get that answer.

The National Import Specialist in New York is the judge, so to speak, on this.

When the local district director receives the request and gets enough information, in many instances a sample of that particular merchandise, it would be submitted to the National Import Specialist whose sole responsibility is classification of that particular area of the tariff.

We have set up a group of Deputy National Import Specialists. We think it is too much for the group that exists right now in New York, so we are farming it out where the request would come to the National Import Specialist, the National Import Specialist would make a decision on whether or not this would require laboratory analysis, which might take longer than 30 days or require another agency ruling of some sort, whether or not it is admissible to the United States.

If he could handle it in New York or if it could be handled in another location where we have another deputy expert, so to speak——

Chairman PICKLE. On the sewing kit, as I recall it, the importer asks for a ruling from you as to whether this sewing kit was a sewing kit and you, in Seattle, said yes, and after two or three shipments of goods, you changed procedure and said it is now luggage; is that correct or incorrect?

Mr. VON RAAB. I don't know how he was informed that this was a sewing kit or not. It could have happened in a number of ways. He could have had dinner one night with a Customs officer who said, "I think it is a sewing kit," or he could have filed a request for a ruling, which is the way he should do it.

Chairman PICKLE. I might ask for a ruling and he will be waiting until the turn of the century sometimes to get that answer.

This man went to your office and said, "Here is my sewing kit." He showed it to him and said, "Is this a sewing kit? Can I ship it?" and your office said yes. He didn't ask for a ruling. He said, "This is correct." "Is this permitted?" and he said, "Yes."

Then your office turned around and reversed it and said, "No, return the goods."

Mr. VON RAAB. Did he ask someone sitting answering the telephone whether they thought it was a sewing kit or did they ask the appropriate official in the Customs Service? That is the question.

It would be helpful to me to answer your question if I knew who he asked and the form in which he received his answer because too many people take informal advice they receive at a social gathering as an official statement of the Customs Service.

If anyone is basing a multi-million dollar business on a response of an unauthorized official, they are going out of business very quickly.

Chairman PICKLE. You are saying that when he asked for this ruling, he didn't really get a ruling and you don't know who he got it from and you question his honesty——

Mr. VON RAAB. We give 5,000 rulings every year. I don't know of every single ruling and from what I understand, this wasn't even a ruling. This was an informal exchange of a conversation between a Customs officer and a businessman.

Chairman PICKLE. You are indicating that he didn't have a ruling that was an authoritative factual ruling from somebody in the Customs office?

Mr. VON RAAB. I am asking whether he did.

Chairman PICKLE. I will find that out. I don't think that is the issue. He got a ruling. He had to go all the way to New York to get another opinion to reverse that particular ruling where he took the item in and showed him.

I think you know that for a fact, but I don't know that I could give you that man's name right now.

Mr. MCGRATH. May I reclaim my time for one final inquiry.

Commissioner, you mentioned that the successful fraud prosecutions have increased, but you didn't provide numbers in your testimony.

Can you or members of your staff provide for the subcommittee statistics on the number of prosecutions you requested and the number which actually went forward successfully?

I don't know if you have that information on hand, but if you don't, I would ask that you provide it for the subcommittee——

Mr. VON RAAB. Special Agent Altensladter is in charge of our commercial fraud program.

If you would like that specific response, we will provide it for the record.

If you would like a more general response, she is capable of answering those questions.

Mr. MCGRATH. Before she responds, may I thank Mr. Schulze for his collegiality here in allowing me to take his spot.

Thank you.

Chairman PICKLE. The Chair recognizes Ms. Altensladter.

Ms. ALTENSLADTER. We don't have the answer and will submit it for the record.

[The information follows:]

U.S. ATTORNEY'S STATISTICS
RE DISPOSITIONS OF CUSTOMS FRAUD CASES
FY 1985-88*

	Guilty Pleas	Guilty Verdicts	Acquittals	Other Dispositions
[18 USC 541,542,543,544 - Customs Fraud Statutes]:				
1988	5	0	1	7
1987	15	4	0	5
1986	15	2	0	3
1985	9	2	0	2
[18 USC 545 - Smuggling Statute]:**				
1988	40	4	2	10
1987	46	6	0	7
1986	22	3	0	7
1985	19	2	0	10
[18 USC 1001 - False Statement Statute]:***				
1988	21	5	5	10
1987	27	9	1	5
1986	42	11	1	8
1985	23	7	1	8
[18 USC 2320 - Trafficking in counterfeit goods or services]				
1988	30	2	0	3
1987	10	0	0	5
1986	9	1	0	0
1985	1	0	0	0

[19 USC 1304 - Marking of imported articles and containers]

1988	6	0	0	0
1987	5	0	0	1
1986	1	0	0	0
1985	2	0	0	0

* FY 1988 is year to date as of August 31, 1988.

** 18 USC 545 is usually charged, where applicable, in conjunction with the Customs fraud, counterfeit goods, marking and false statement statutes; however, not all of these cases can attributed to commercial fraud as 18 USC 545 is also charged in non-commercial fraud Customs cases and the U.S. Attorney case tracking system does not differentiate.

*** 18 USC 1001 is usually charged, where applicable, in conjunction with the Customs fraud, counterfeit goods, marking and smuggling statutes; however, not all of these cases can be attributed specifically to commercial fraud as 18 USC 1001 is also charged in non-commercial fraud cases and the U.S. Attorney case tracking system system does not differentiate.

U.S. ATTORNEY'S STATISTICS
FOR U.S. CUSTOMS COMMERCIAL FRAUD
FY 1985-88*

	Formal Cases Referred	Immediately Declined	Formal Cases Accepted	Later Declined
[18 USC 541,542,543,544 - Customs Fraud Statutes]:				
1988	38	2 (5%)	36 (95%)	17 (47%)
1987	45	5 (11%)	40 (89%)	17 (43%)
1986	29	8 (28%)	21 (72%)	13 (62%)
1985	40	3 (8%)	37 (92%)	13 (35%)
[18 USC 545 - Smuggling Statute]:**				
1988	136	5 (4%)	131 (96%)	25 (19%)
1987	147	3 (4%)	144 (96%)	37 (26%)
1986	86	13 (15%)	73 (85%)	22 (30%)
1985	110	18 (15%)	94 (85%)	19 (20%)
[18 USC 1001 - False Statement Statute]:***				
1988	87	14 (16%)	73 (84%)	25 (34%)
1987	101	18 (18%)	83 (82%)	32 (39%)
1986	167	54 (32%)	113 (68%)	25 (22%)
1985	112	13 (12%)	99 (88%)	19 (19%)

* FY 1988 is year to date as of August 31, 1988.

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Ms. Altensladter. I have a number of cases such as trademark, copyright, textiles, and steel.

Would you like those at this time?

Chairman Pickle. We will come back to this issue at a later date.

Mr. von Raab. Mr. Chairman, we are checking with the Seattle district so that we do have an accurate report on what did transpire, whether there was a ruling or not.

Chairman Pickle. I don't know that there was a ruling. You classified the sewing kit as you had all along and this was just another example.

So I don't know that you are correct there was an official ruling.

You already classified the sewing kit as a sewing kit. Now you changed it.

Mr. von Raab. Classification is only done through a ruling.

Chairman Pickle. What is the importer to expect when he shows you his item and it is classified a sewing kit and they tell him yes——

Mr. von Raab. He should get a binding ruling from the Customs Service.

Chairman Pickle. He may not have gotten a binding ruling, but he followed your classification that you established yourself.

The Chair recognizes Mr. Flippo.

Mr. Flippo. Thank you, Mr. Chairman.

I do have a question or two.

Mr. Commissioner, I wanted to talk with you about section 1595 authority. I know you have been using this authority very effectively in the drug battles.

Just to review briefly, I believe you were granted some new authority in 1986 in regard to drugs and probably—and it was not only limited to drugs, but was expanded to include other areas as well under the new authority.

Has this new authority helped you in the battle against drugs? Can you tell us what you have been able to do under this new authority that you could not do before?

Mr. von Raab. Without question, the new authority has made it much easier for us and much more effective in our battle against drugs.

I don't happen to have a breakout of those seizures, of those enforcement actions that were made possible through the new authority versus the old authority.

If the committee would like a breakout of that, I can certainly provide it.

Mr. Flippo. I think that would be helpful to know what seizures you have been able to make in that area.

Mr. von Raab. It is a much more streamlined and useful process to Customs in that area.

[The information follows:]

The following is submitted for the record in response to Mr. Flippo's question:

Customs is presently exploring the feasibility of adding new capabilities to its seizure tracking systems. Among other capabilities being explored, Customs is looking to add more violation codes to the system. Specifically, the relatively new 1595a(c) statute is not now in the system in such a format as to provide narcotics seizure statistics under 1595a(c).

Since the existing system does not yet capture data on 1595a(c) narcotics seizures, such information must be manually extracted. Customs will continue to work this issue, and will keep the committee advised of its progress toward a more comprehensive answer. At this time, the requested information cannot be provided for the record.

Mr. FLIPPO. And the new authority that was granted is not limited totally to drugs, but is expanding somewhat to permit seizures in the commercial area as well?

Mr. VON RAAB. That is correct.

As a matter of fact, the authority, at least in the opinion of many Congressmen, and it is reflected in some of the reports backing it up, was put in there to assist us primarily in the area of merchandise issues.

Mr. FLIPPO. It is in the area of commercial seizures that I have some concern since that was a new authority that was granted in 1986 that was not permitted before that.

It is important to the committee that we have an understanding of how you are utilizing that new authority to seize commercial goods.

One of the things that concerns me is the complaints that we have been receiving about certain seizures and how you are utilizing this new seizure authority.

Are you having much problems implementing this new authority in regard to commercial seizures?

Mr. LANE. No, sir. I think that in the initial stages of implementing this, we had two major problems.

One is the importing community believes strongly that we didn't have the right to use this authority in the commercial area and secondly that we were using it in an overzealous fashion.

With regard to that later complaint, Customs took almost immediate action and we have greatly strengthened our controls over use of 1595a(c) authority in the commercial area and we have restricted it to restricted merchandise.

We have also required in a lot of instances that headquarters approval be obtained before it can be used.

We have also raised the thresholds in the areas from 5 to 10 percent in overweight cases that it can be used.

We have also required that it only be used in certain areas where there are repeat and flagrant violations so we have greatly strengthened our controls over the field use of this.

Mr. FLIPPO. Perhaps I could encourage you to give me a brief response to what you consider to be the purpose of seizing general merchandise.

Mr. LANE. Well, the purpose is that the violator is in violation of the law and to seize the goods, hold them for forfeiture, exportation, further investigation, et cetera.

Mr. FLIPPO. Well——

Mr. LANE. I guess the idea is to get compliance one way or the other.

Mr. FLIPPO. We have received several complaints about specific areas. You are probably familiar with the Fingerhut problem and I can review that with you, where there were seizures made that seems to be a little bit of abuse of this authority.

In other areas—I could go through a lot of cases which we don't really have time for.

Let me go to the point and say that I believe you are using a method, Commissioner, to evaluate the performance of various individuals and inspectors by grading them on the amount of seizures that they—in order to be fully compliant or fully satisfactory in their performance, I believe you are using a requirement that they have to have made six seizures with a value of more than $3,000 or something like that?

Mr. **Lane**. I don't think there is a tight relationship between 1595a(c) and what is called in Customs the point system.

However, in certain regions of the country, we do use a point system as a partial method of evaluating our employees.

Mr. **Flippo**. Do you think that your way of grading your inspectors encourages abuses?

Mr. **Lane**. I do not. I believe there is and has been the potential for abuse in certain areas, but that the regions have established floors to discourage the type of employee that might try to take advantage of a system like that.

Mr. **Flippo**. You don't think that requiring better than six significant law enforcement actions, for example, in order to achieve any performance rating of acceptable—do you think that motivates an inspector to make seizures when all he has to do is to seize six shipments of cargo worth more than $3,000?

Mr. **Banks**. There are point systems to try to inspire people to do a more effective job in enforcing the trade laws and that is, indeed, one piece of a performance evaluation, but it is only one piece.

In the point system that you just mentioned, one equal weighted piece is public service. Professionalism is an equally weighted factor in determining their performance.

Mr. **Flippo**. In these seizures, many of them are later set aside, are they not, without—demonstrated without cause?

Mr. **von Raab**. If we were wrong in seizing it, we would set it aside.

In many cases, the subsequent action is a result of negotiation between the importer and the Customs Service in which they agree to pay a certain penalty which is less than the cost of the seizures.

Mr. **Banks**. In some cases, they are merely detention because something is not adequately marked.

Mr. **Flippo**. Part of our responsibility is to make some kind of judgment about the appropriateness with which seizures are applied and it gives us some pause for concern when we see that a significant portion of the way you grade inspectors is how many seizures they have made and their value.

Could you furnish our committee with a little further details with regard to the amount of seizures of commercial property that has been made and how many of them have been relegated or set aside after the investigation so that we can get some kind of measure about what is going on there?

Mr. **Banks**. Certainly.

[The information follows:]

The following is submitted for the record in response to Mr. Flippo's question:

For fiscal year 1987, out of all seized merchandise turned over to Northrop, the following disposition percentages apply:

	Percent
Total 6,904 dispositions	
Merchandise sold	33.1
Merchandise destroyed	11.9
Merchandise returned to importer or remitted (with or without monetary penalty)	47.7
Merchandise transferred to other agencies or retained by Customs	6.0

For fiscal year 1988, the following percentages apply:

Total 11,278 dispositions	
Merchandise sold	25.0
Merchandise destroyed	20.7
Merchandise returned to importer or remitted (with or without monetary penalty)	44.7
Merchandise transferred to other agencies or retained by Customs	5.2

The above figures refer to items only, not dollar value percentages.

Customs is attempting to manipulate from data on hand, those statistics relevant to merchandise seized under 1595a(c). Merchandise not turned over to Northrop is not tracked for disposition purposes in line with the committee's request. Customs will forward further information as soon as it is available.

Mr. von Raab. If there were an inspector who made improper seizures, those that would be turned back and would subsequently be determined that they were inappropriately seized that would go against him—that would be a black mark on his record and so it certainly—it is a terrible thing for an inspector to become known as an individual who is making inappropriate seizures.

I have spoken directly to district directors when complaints have been brought to me about inspectors who are taking actions which, in my view, are nothing but harassment and I can assure you that there is a number of district directors out there who have had a personal conversation with me so in no way is the Customs Service encouraging or even permitting inspectors where we know about it to harass legitimate customers.

Mr. Flippo. I didn't intend to suggest that.

Is the commissioner familiar with the JI case involving tractor parts imported from Canada where three truckloads of parts for tractor use in the drought-stricken farm belt areas were seized on the way into the United States?

Mr. von Raab. No, but I can become familiar quickly if you give my staff a chance to make a telephone call. Apparently we don't have a document on that with us.

Mr. Flippo. We have several specific cases that I would like to share with the commissioner and his staff so that you might look those over, complaints that we have received that I think the commissioner should look at very carefully.

Mr. von Raab. It is extremely useful to Customs to know about that because it is only in that way that we can address any of these shortcomings and correct them.

Mr. Flippo. I will just make my point and finish, Mr. Commissioner.

I think that it is obvious that if you believe that the Customs authority continues to need the seizure authority in commercial cases, that we all take additional steps to ensure that abuses of that authority are dealt with very rapidly within the Customs agency and that the abuses cease immediately.

Mr. von Raab. I agree with that.

Mr. **Flippo**. That is the point I am trying to make and I will be looking forward to receiving the additional information.

Thank you, Mr. Chairman.

Chairman **Pickle**. Thank you, Mr. Flippo.

Let me proceed just 1 minute with some of these other procedural questions.

In the case of opera sets, we have allowed opera sets into this country for years duty free and all at once the Customs office has refused to change that classification.

Why was that and why did you handle it in the manner you did?

Mr. **von Raab**. Let me just explain.

As we know, Mr. Feinstein testified concerning the problem of importing scenery into the United States and he is the Director of the Washington Opera and the fact that duty was required on the importation of these items.

In his statement, he contended that all the American operas are not profit institutions and as such are on tight budgets and, therefore, shouldn't be subject to unjust and unexpected duties.

He stated that designers and painters are recognized as professional artists around the world and must adapt their work to blend harmoniously with the whole opera, therefore, he requested some changes and he also indicated that charging duty on these opera sets was a recent change.

A thorough review of all the rulings covering opera scenery show that these items have never been accorded free entry.

Any estimates accorded this treatment were either misdescribed or were erroneously granted free entry and some of the rulings on this were granted as far back as 1981.

There were two specific rulings that these items are not allowed to be entered free. We certainly have no objection to the recommendations that he made to the Congress in terms of changing the law to allow these items to be brought in freely, but in this case, he apparently just never really read the law and he presumed that certain things should happen.

Chairman **Pickle**. My concern, Commissioner, is not so much on the ruling. It may be a borderline case; a lot of them are. For years and years, these items have come in duty free. This was the same kind of a shipment.

You may involve yourself with nuances, but it is the same thing.

Why did you change without notifying these people. In the opera in Washington, it cost them $24,000 alone.

Commissioner, are you listening or——

Mr. **von Raab**. Yes, I am. I just wanted—there have been opera equipment that has come in, but it has come in with an opera company for use of a particular and it was immediately shipped out of the United States.

In the case of Mr. Feinstein, he confused the difference between importing something that remained in the United States permanently on which duty would have to be paid as opposed to a visiting opera company that would bring in sets and other things for a couple of weeks or months, however long the run would be, but then would be brought out.

In that case, there is no duty charge. It is called a temporary importation, but in the case of importing something for consumption in the United States that has never been allowed to be entered free of charge.

Chairman PICKLE. My point is not to argue with you about the fine definition, essentially you have always allowed these sets to come in duty free.

Mr. VON RAAB. That is wrong.

Chairman PICKLE. That is your classification, no disagreement about that. You said no, you can't do it and they are having to pay that.

Mr. VON RAAB. Your statement is incorrect.

Chairman PICKLE. You have got a right to change classifications and we have to accept that, but it would be a better procedure to say we have said from now on we are going to classify these as utility or some other category without notice.

That bothers people because you are arbitrarily changing it. The only thing that was changed was your reclassification.

Mr. VON RAAB. The Customs Service has not changed its position on the characterization or the duty value of sets being brought in for opera companies.

Chairman PICKLE. I will yield to Mr. Schulze.

Mr. SCHULZE. Thank you, Mr. Chairman and thank you, Commissioner, for your testimony.

I want to ask you in the area of VRA's, I wrote to you some time ago after I had heard about a shipment of East German steel which allegedly had been transshipped through the EC into the United States.

Customs replied to me that since the Office of Agreements Compliance, International Trade Administration, Department of Commerce has primary responsibility for administering VRAs, "we are coordinating our investigating efforts with that agency." It inferred that I should go to them.

So I wrote to them and they wrote back to me and said, "Customs keeps details strictly confidential.

"You may wish to contact Commissioner von Raab directly."

Who is in charge of VRAs? Is there divided responsibility and should we change the law and make one organization responsible?

Mr. VON RAAB. There is divided responsibility.

Mr. SCHULZE. I never got an answer to my question, but a greater concern is should there be a more direct line of responsibility or should there be divided responsibility? What kind of cooperation are you getting?

Mr. VON RAAB. First let me apologize to you for getting caught in that sort of bureaucratic non-performance. I am embarrassed by it and by Customs' response to your request.

I will look into it personally as soon as possible.

The policies or the standards are set outside of the Customs Service and then the Customs Service is responsible for enforcing the laws or the policies that are set by the other organization.

The way the Customs Service is structured, we do not have an office that would do these kinds of negotiations or would be able to or is prepared to make that kind of policy.

At the same time, the organization that is responsible for it does not have the large investigative force that we have to investigate these cases.

So I think it is a fair division of labor between the two organizations.

I think that the two letters that you received were appalling, and we should certainly do a better job.

Mr. SCHULZE. All I was trying to find out is whether these allegations are true; if they came in and what they did about it.

Mr. VON RAAB. You will know by the end of this week, if not by the end of the day. I am sorry for that.

Mr. SCHULZE. That is good news.

Let's go on to another topic. Mr. Commissioner, I would like to talk a little bit about the sharing of seized and forfeited assets with State and local law enforcement agencies.

It seems to me that Customs has the authority to share forfeited assets with State and local agencies who participated directly in the seizure or forfeiture. Customs also has the authority to reimburse State and local agencies from the forfeiture funds for costs incurred in joint operations.

My line of questioning is whether you are using your discretion wisely. I want to know whether Customs is using its discretion wisely to encourage participation by State and local authorities or whether you are sort of shepherding those assets to yourself and trying to keep them away from others. That is the direction that I am going in.

With the realization that asset forfeiture is fairly complex and technical, I want to ask you a couple of straightforward questions to assist my understanding of how it works.

The first question is, what are Customs' options for the disposition of forfeited assets and property?

Mr. VON RAAB. There are a range of options that the Customs Service has. If there is a joint enforcement effort, that is one in which a State or local police or sheriff's department has any involvement, we have the option of allowing that State or local police department to take over the fruits, if you will, of the enforcement action.

It is absolutely ironclad Customs Service policy that in those cases, 100 percent of the fruits of those enforcement actions if that is legally possible—in some cases, there may be a storage fee or something—is to go to the sheriff's department or the local police department. That is our policy. That is different from the Justice Department policy which is a lower percentage.

To give you an idea of the asset sharing, in our fiscal year of 1988 through the end of September, we had transferred $11 million worth of assets and have pending requests of 40.

Now, it is pending because, as we are well aware, in the case of assets that have any value whatsoever, there is typically a judicial proceeding that is necessary in order to perfect the title to these assets.

Mr. SCHULZE. Was that fiscal year 1987?

Mr. VON RAAB. 1988. That is through 26 September, $10,946,000 transferred, $39,701,000 pending.

Mr. SCHULZE. That is up pretty substantially from 1987, too. According to figures that I have, 1987 was $6.2 million?

Mr. VON RAAB. That is right. The Customs Service has the most active program with respect to state and local officers. Every one of our offices is encouraged——

Mr. SCHULZE. Customs is not required to do this. This is at the discretion of the commissioner and the commissioner's policy has been that you are bending over backwards to make sure that they are shared?

Mr. VON RAAB. That is correct.

Mr. PIATT. As regional commissioner from the southwest region, I can say that that policy is vigorously pursued, and that assets not only in the sense of currency——

Mr. SCHULZE. What percentage of that $11 million is total assets seized for forfeiture?

Mr. VON RAAB. It is a little less than 10 percent. It is about $136 million, but we also have to look at the pending requests, which are another 40.

Mr. SCHULZE. But it is your policy to bend over backwards and try in every instance that you can where they deserve it?

Mr. VON RAAB. Yes. If you have a case in which that policy is violated, someone is in trouble.

Mr. SCHULZE. How would state and local agencies find out about the opportunity to share forfeited assets?

Mr. VON RAAB. I have personally met with the sheriff or the police chief in 95 percent of all of the counties running from San Diego to Fort Pierce. I have done that myself.

Mr. SCHULZE. What is the distribution of that book on shared assets? How is that distributed? Do you have an outreach program or——

Mr. VON RAAB. We do have—as with every government organization, we have a publication on this matter.

Mr. SCHULZE. That is what I am talking about.

Mr. VON RAAB. Our regional commissioners are required to set up a liaison with all state and local police organizations who have a connection to the border or to any of the crimes for which we are responsible.

For example, we have very close liaison with the New Jersey State Police, the New York State Police. You can name virtually all the state police——

Mr. SCHULZE. What types of assets are you authorized to share? Can you share anything? In other words, cash, jewelry, cars, watches?

Mr. VON RAAB. I believe we can share anything that is seized as a result of an enforcement action in which they were involved.

Mr. SCHULZE. Do you have limits on what you share? In other words, you say we are not going to just hand out cash. "We will do it with assets or we have to sell them and then we will help you."

Mr. VON RAAB. I am not aware of any limits. We certainly would turn over a plane, a car, a boat, cash. When we get into more arcane types of seizures like real estate or businesses or something, I think that we have a responsibility to ensure that it is handled appropriately, and in those cases it is possible that we may turn over the sales results rather than the assets.

To give you an idea, that $10 million, it was $355,000 of vehicles, $597,000 of vessels, $521,000 of aircraft, only $5,000 of general property, $9.5 million of currency and nothing of real estate. Although we do have one real estate transaction of $400,000 pending.

Mr. SCHULZE. You touch on another area I want to get into.

Can you briefly explain to me the chain of events with seized assets from the time there is a drug raid and an agent seizes an automobile that is loaded with drugs, jewelry, guns, and so forth.

Is an inventory made on the spot? What happens to that inventory? Where does it go? Is there a paper trail of those assets and how closely is that monitored?

Mr. VON RAAB. This process is a long and complicated process, one in which we keep trying to streamline. There are basically a number of steps for seizing under 19 U.S. Code 1592.

First a seizure is made; that is a Customs officer——

Mr. SCHULZE. Here I am talking about totally legitimate seizures.

Mr. VON RAAB. We find a power boat that has 500 pounds of cocaine on it; what do we do with it? We seize it and we report that seizure by the Customs officer, in that case, an agent to his boss, and the seizure is turned over to the district director.

Mr. SCHULZE. Is there a listing made within 10 minutes, two hours, 48 hours, et cetera, of the assets seized?

Mr. VON RAAB. A form is filled out detailing all the important information on that seizure. That is a 151. That is turned over to the district director.

Mr. SCHULZE. How detailed is that form? Let me state a hypothetical. Suppose you get a boat with 500 pounds of cocaine and there are 18 automatic weapons, four pistols, 800 rounds of ammunition, four gold watches, 10 gold chains and $80,000 worth of cash. How specific is that——

Mr. BANKS. It is reasonably specific. It contains all the identifying information about the parties involved.

Mr. SCHULZE. Who is responsible for filling that form out?

Mr. BANKS. The seizing officer.

Mr. VON RAAB. It will be the inspector or the agent or the officer who actually seized the goods.

Mr. SCHULZE. If there are five agents that go aboard——

Mr. VON RAAB. It would be the senior officer on that raid.

Mr. SCHULZE. He is responsible for filling that out?

Mr. VON RAAB. Right.

Mr. SCHULZE. What happens to both the paperwork and the items? Is there a follow-up on each item, where it goes, who is responsible for it?

Mr. VON RAAB. Well, assuming that the criteria are appropriate and that is reviewed when that form is submitted to the district director, he reviews that to ensure that this is an appropriate seizure of goods.

Mr. SCHULZE. We are assuming that it is an appropriate seizure and they are caught red-handed and they are guilty.

Mr. VON RAAB. Then we send a notice of seizure to the owner of the whatever it is if we know who it is; assuming there is a captain on board, he would get the notice. At that point we in effect tell them we have seized this on behalf of the United States Government.

At that point, we hold it and we wait for 30 days. If we don't receive a response asking, a petition to return this within 30 days and the goods are worth less than $100,000, then those goods become automatically the property of the U.S. Government.

Mr. SCHULZE. Let me get into more detail. All of this material is on the boat. Is the boat then taken around to some specific place where you would store it? Is it left there and you put a seal on it? Are the guns and money left on the boat? Is it taken off and taken to headquarters? Is there a specific room it is put into? Is there an individual who gets it? Does he sign for it?

Mr. VON RAAB. The seizure form will list everything the officer has found onboard. At that point, we turn all the goods over except for weapons, narcotics and other, you might want to call them, dangerous items to the Northrop Corp., who then manages the seized——

Mr. SCHULZE. Physically or is that a paper exchange? Are they responsible to go out to Fort Lauderdale and get it or do your agents take it to a location—how does that work?

Mr. VON RAAB. It works both ways. Usually Northrop comes and gets it. Mr. Riley is our controller and he would like to answer these questions.

Mr. RILEY. At the time of seizure, a very detailed inventory is taken. It is taken again by Northrop at the time that we turn that asset over.

Mr. SCHULZE. You can blank out the names and send me a couple of copies of these.

Mr. RILEY. Sure, and that inventory stays with the property until it is disposed of.

Mr. SCHULZE. But there is just one copy?

Mr. RILEY. No, sir, it stays in the district. It goes to Northrop also in Lawton, Oklahoma.

Mr. SCHULZE. Let's back up. The inspector that is in charge makes out a list?

Mr. RILEY. Yes, sir.

Mr. SCHULZE. Is it one single copy, duplicate, triplicate, five copies, 10 copies? How many copies are there?

Mr. RILEY. The initial form 151 is in five copies.

Mr. SCHULZE. What is the distribution of those five copies?

Mr. RILEY. One goes to the FP&F officer, the Fires, Penalties and Forfeiture officer, one, to the district director——

Mr. SCHULZE. The forfeiture officer in the district. In each district there is an officer who is in charge of forfeiture?

Mr. RILEY. Fines, Penalties and Forfeitures, correct.

Mr. SCHULZE. That is his main responsibility and he gets these forms?

Mr. RILEY. Yes. I believe that the remainder of the distribution is however the district director decides. One is a data entry copy so there are two copies that the districts can use.

Mr. SCHULZE. Does this forfeiture officer physically receive any of these goods or is he responsible for their being kept in place and not missing——

Mr. RILEY. It depends on what it is. If it is a small item, it can go to a seizure clerk. If it is a boat, it does not. It goes to Northrop, for example.

Mr. SCHULZE. Who determines that? I am thinking of cash, gold, and diamonds versus drugs, which are easily convertible.

Mr. RILEY. The Northrop contract specifically excludes cash, narcotics and firearms; so in the case of cash, that is handled by Customs seizure custodians.

Mr. SCHULZE. And he keeps an inventory on cash?

Mr. RILEY. Yes.

Mr. SCHULZE. This forfeiture officer is responsible for that cash?

Mr. RILEY. Yes.

Mr. SCHULZE. Does anybody look over his shoulder and make sure the accounting is——

Mr. RILEY. It is counted many times.

Mr. SCHULZE. Have there ever been problems with shortages?

Mr. VON RAAB. Yes, there have.

Mr. SCHULZE. Do you have an internal set-up so that when there are discrepancies, you can trigger some safeguard action?

Mr. VON RAAB. We have an office of internal affairs who has——

Mr. SCHULZE. What I am getting at, is there a method whereby they monitor this?

Mr. VON RAAB. They monitor it on a sort of regular basis by doing audits and by reviewing the practices. They don't monitor every single one of these events, but if there ever is a cash shortage, then they obviously would go in there and the cash shortage would be disclosed as a result of the internal controls that they in turn are approving.

Mr. SCHULZE. Commissioner, are you satisfied that there are enough controls in place so that none of this seized property is slipping out the door?

Mr. VON RAAB. I am satisfied that the Customs Service is doing a responsible job in managing its seized assets. No human system——

Mr. SCHULZE. The chairman is trying to get me off of this topic. If you have a chance, would you sit down send me a list, or a paper trail of how this works? I am not trying to second-guess you. I want you to convince me that this is being done and it is done well and nothing is slipping through. I want to be convinced.

Mr. VON RAAB. I want you to be convinced, because if you are not, we have a problem as well.

Mr. SCHULZE. I want to make sure that is happening and what Northrop's responsibility is, whether they are fulfilling their responsibility as well.

Mr. VON RAAB. If you can give us a half hour or hour of your schedule, we will give you a full briefing on this.

Mr. SCHULZE. Thank you.

Thank you, Mr. Chairman.

Chairman PICKLE. The Chair recognizes Mr. Anthony.

Mr. ANTHONY. Thank you, Mr. Chairman.

Before I get into some areas of concern that I have, I took the privilege of pulling out all of the statutes Customs is required to oversee, and I must admit I was staggered to find out that at the moment there are some 400 Federal statutes within Customs' jurisdiction.

It is apparent through some of our more recent legislative enactments, that we continually rely on Customs for assistance in addressing some of our social ills in this country.

So up front I would like to thank you for at least doing what you have done so far, and you seem to be a targeted agency in terms of us trying to dump a lot of additional workload on you.

Now that I have built you up, I would like to spend a little time with you nitpicking on a few areas of concern which have been brought to my attention and would like your response to them.

The first area relates to the surety problem. Specifically, I wish to address project 6000, the backlog cases, and some of the complaints that have been brought to my attention.

As I understand it, an importer has a surety; if he defaults on duties, Customs sends notification to the surety to pay. This demand is referred to as "liquidated damages." You send sureties a notice, and assuming they are still in business and have the capacity to pay, the sureties will either make the payment or will negotiate a payment schedule with Customs.

Am I correct so far?

Mr. VON RAAB. Yes, that is essentially correct.

Mr. ANTHONY. Could you tell me why you got into project 6000? What created the huge backlog and the administrative need to try to get it updated?

Mr. VON RAAB. What happened is that a number of surety companies had either failed or had not submitted a timely petition or failed to comply with a mitigated decision. We had 13,000. We had a serious problem over time with our sureties.

[The following was subsequently received:]

We had approximately 13,500 cases which became Project 6000.

Mr. VON RAAB. Although they appeared to be sureties in the normal sense of the word, I might think that if you have a surety on a case and something goes wrong, it is sort of an insurance policy and the insurance company pays.

Many times when you go to the insurance company, they don't pay because they say you didn't operate your car properly or you didn't pay your bills. We have a similar problem with sureties.

Mr. ANTHONY. That is All State. They make you go to court.

Mr. VON RAAB. There is good business in the surety business.

Mr. ANTHONY. It seems, though——

Mr. VON RAAB. He just hadn't paid.

Mr. ANTHONY. I was a trial lawyer and I did sue All State on behalf of aggrieved automobile victims from automobile accidents but when I called the agent for All State I got all the necessary information. However, if I were a representative of a surety, I don't even get referenced to the insurance policy or to the surety claim as indicated by this form, which means I have to start tracking through the files of the thousands of clients I represent, if the information is given to me in a manner which does not enable me to cross-reference in my computer, then all of a sudden I am at a loss.

Why does Customs not give sureties more information or give them all the available information to enable them to make a cleaner determination as to whether they have a liability so you can collect your money faster?

Mr. VON RAAB. Under the law it is their responsibility to retain——

Mr. **Anthony**. Under the law, do you take the position that you have authority to give it to them, or do you feel that the law prohibits you from giving it to them?

Mr. **von Raab**. No. The law does not require us to provide it to them.

[The following was subsequently received:]

The law only requires us to provide that information which would provide a surety sufficient means of ascertaining the bond on which demand for payment is being made. Customs bills have been designed to provide sureties with that information. The law does not require Customs to routinely provide sureties with copies of entry papers and Customs bonds for every bill.

Mr. **Anthony**. You want us to change the law to require it?

Mr. **von Raab**. I would like you to change the law to drop the issue of sureties because they aren't worth anything to the Customs Service. They are an added burden that is illusory in terms of the security that the Customs Service gets from them. The Government would be better off to be a self-insurer rather than to be receiving protection of sureties.

Mr. **Anthony**. Would you submit to me a proposal in that regard for my education and possible future legislative action?

Mr. **von Raab**. Yes.

Chairman **Pickle**. If you are recommending that you would do away with sureties and if you have a proposal, I would like to have your reason behind such a recommendation, so include that with whatever information you send to Mr. Anthony.

Do the sureties know that?

Mr. **von Raab**. They are well aware of it. As a matter of fact, because they knew of our feelings in this they went to a number of Members of Congress and had language inserted in our appropriations bill that would prohibit us from dropping the requirement that we have sureties on a number of Customs cases.

So in many cases we take sureties where we don't think they are necessary; therefore, in my opinion, adding costs to the costs of importing into the United States, having a surety where you really don't need one.

Mr. **Anthony**. It is a fascinating concept, it is the first indication I have that you held this personal viewpoint.

I would be interested in getting documentation in terms of how many man hours you would save; whether or not it would be a revenue raiser or revenue loser; whether or not it could be easily implemented and yet maintain the level of protection the public expects looking for in terms of contraband, counterfeit goods, and quality goods.

Mr. **von Raab**. I think you will find it would do all those things.

Mr. **Anthony**. At the moment we are stuck with the system as it is.

Chairman **Pickle**. That would mean there would be no insurance. It would be up to the individual. He suffers the liability?

Mr. **von Raab**. The importer has to pay anyway. The surety is extra protection for the Government, not for the importer.

Chairman **Pickle**. The importer would have to handle that himself?

Mr. **von Raab**. The importer has to handle that himself now. The surety does not protect the importer; it protects the Government.

Mr. **Anthony**. I understand who is being protected here. I am fascinated about changing the law to correct what is a problem, but at the moment I am stuck with what the current law is.

Mr. **von Raab**. Right.

Mr. **Anthony**. So, I am asking these questions to try to explore the attitudes of those who administer the program to see if we can find a way to administer——

Mr. **von Raab**. We are starting to work with a number of surety companies to provide them with exactly the information that you are asking about. We have a plan—someone can report on the status of it—to actually provide them with tapes.

We are doing this to provide them with tapes, in other words, electronic tapes containing this information so that they can identify more easily those cases in which there is a default. So we are trying to do that.

Mr. **Anthony**. Who do you provide the tapes to?

Mr. **Lane**. Washington International for one. I can't tell you the other companies. Any that are able to take it in an automated form.

Mr. **Anthony**. You said Washington International for one. Would you give me number two and number three?

Mr. **von Raab**. Washington International Insurance Company, St. Paul Fire and Marine——

Mr. **Anthony**. In what cases do you give Washington International the entire tape, which obviously is an exemption from your previous testimony where you thought it was the responsibility of the importer and not your responsibility. So you have already exempted your own testimony——

Mr. **von Raab**. I can't say that we didn't do it. I am saying that under the law it is not our responsibility.

Mr. **Anthony**. But "under the law"—you have already exempted your own personal testimony in the last 30 seconds?

Mr. **von Raab**. Then let me correct my testimony. Under the law, this is not required. This is a service that Customs provides to the sureties.

Mr. **Anthony**. Who is number 2?

Mr. **von Raab**. St. Paul Fire and Marine Insurance Company; Cook & Palmiotto International Limited, agent for Insurance Company of North America; C.A. Shea & Company, agent for American Motorists Insurance Company, American Casualty Company of Reading, Pennsylvania, Continental Casualty Company, National Fire Insurance Company of Hartford, Phoenix Assurance Company of New York, American Home Assurance Company, National Union Fire Insurance Company of Pittsburgh, Pennsylvania, Federal Insurance Company, the Hanover Insurance Company, Massachusetts Bay Insurance Company; Trade Insurance Services, Agent for Sentry Insurance, International Cargo and Surety Insurance Company, International Business and Mercantile Reassurance Company, Oceanic Insurance and Surety Company, and Old Republic Insurance Company.

Mr. ANTHONY. The staff just handed me a letter addressed to Jeff Fox, Committee on Ways and Means, dated September 21, 1988. I will make a copy available to you, Mr. von Raab.

It says, "we have received tapes, but have found them to be lacking in usable information. We have brought this to their attention, but to no avail.

"The basic problem is addresses. Customs sends to us what they feel is claim data but they do not give us the addresses from which we could contact those claimants. Since they send us some of the same claims as hard copies (on paper) which include the addresses, why delete the information on the computer tape? It has been a step forward, but a very small step."

I have two questions based on this. My initial question is, if you provide that many exceptions to the general rule, has not the general rule been so totally eroded that you ought to make the tape generally available to any surety who wants and needs it?

Mr. VON RAAB. If you will permit there is no general rule. I said the law is such that we are not required to do this.

[The following was subsequently received:]

The law is such that we are not required to provide any information other than the information currently provided on Customs bills.

Mr. VON RAAB. The general rule is that we provide this information.

Mr. ANTHONY. Let's get my conversation and your conversation down on a common level. Let's talk about what you do in Customs.

Mr. VON RAAB. We provide this information to the sureties wherever possible.

Mr. ANTHONY. If you have that many exceptions to the general rule within Customs, why don't you give it to everybody?

Mr. VON RAAB. We will give it to them if they can receive it, if they have the electronic environment in which they can receive it.

Otherwise, we provide the necessary information through the billing process.

Mr. ANTHONY. I am going to read off a list of information. I would like you to answer the question as to how much of this information is presently being referred to the sureties under your program implemented to give them the tape, and how much of it is not.

Entry number, name and address of importer.

Mr. VON RAAB. Yes.

Mr. ANTHONY. Yes on that. Entry number, no?

Mr. VON RAAB. Yes.

Mr. ANTHONY. Entry number is yes?

Mr. VON RAAB. Yes, it is. Would you like—would it be easier for me to give you the list of what we give them?

Mr. ANTHONY. No, it would be easier if I ask the question.

Entry number, yes, name and address of importer.

Mr. VON RAAB. Importer's name, address and IRS number.

Mr. ANTHONY. I put "yes" there?

I would like to give you a copy of this letter that we received that says they are not receiving it in a usable form to see if you can assist them in giving them information that fully implements the rule that you are trying to give them.

Importers, Customs importer number.

Mr. VON RAAB. IRS number, right.

Mr. ANTHONY. You only do IRS number?

Mr. VON RAAB. That is the importer number.

Mr. ANTHONY. That is the same as the importer's number?

Mr. VON RAAB. Yes.

Mr. ANTHONY. Name and address of broker?

Mr. VON RAAB. No. Just the broker identity code. There is a code that identifies what the broker is, number 12 or number 50.

Mr. ANTHONY. My fifth request would be a code explaining nature of the liquidated damages or increased duty charges, in other words some citation.

Mr. VON RAAB. Amount of liquidated damages——

Mr. ANTHONY. I know you do the amount. It is like the last plea for time, asking for $100 million, hoping you will get $1 million.

Mr. VON RAAB. We give them a citation of the law or regulations violated.

Mr. ANTHONY. Do you actually cite the regulations or the code?

Mr. VON RAAB. My understanding is there is a code that is capable of being converted into the region and in most cases that would convert into a citation of the law or regulations.

Mr. ANTHONY. An indication of where or what port of entry the claim arose.

Mr. VON RAAB. Yes.

Mr. ANTHONY. Date of the violation giving rise to the liquidated damages.

Mr. VON RAAB. Date of entry was due.

Mr. ANTHONY. Date of the violation giving rise to the liquidated damages.

Mr. VON RAAB. The dates bond was beached, I assume that is the same date.

Mr. ANTHONY. I would concur with that interpretation. The answer is, yes.

Mr. VON RAAB. Yes.

Mr. ANTHONY. The bond number is the last one I have here. When I say bond number, I assume I am talking about the surety number.

Mr. VON RAAB. The entry bond number is given.

Mr. ANTHONY. The Customs bond number is indicated?

Mr. VON RAAB. Yes.

Mr. ANTHONY. I have the form here and I have read through it, what about this assigned bond numbers, the surety assigned bond numbers?

Mr. VON RAAB. No.

Mr. ANTHONY. Do you have that available?

Mr. VON RAAB. I don't think so.

Mr. ANTHONY. Is it available to the customers on the statement?

Mr. VON RAAB. Not on our computers, we don't use those numbers. We use the Customs bond number.

Mr. ANTHONY. You use—here is where you will have to educate me on the system.

Mr. VON RAAB. The surety bond number is one that the company issues to its own bond.

Mr. ANTHONY. Here is what I am trying to understand. If you use your bond number and you send the notice to me as the surety, will that clearly identify who my customer is so I can go talk to that customer about whether or not I should pay these liquidated damages? It is my understanding the answer is, no. That is the reason I asked the question.

Mr. VON RAAB. We believe it would be because they receive copies of the continuous bonds which has our number on it with their number.

Mr. ANTHONY. One of the consistent complaints I have received from briefings in preparation for this hearing is that the sureties that were not mentioned in your list—and I must admit I was shocked to learn there were that many on the list because I was under the impression that the list was very short—so I would like for you to give me more detailed information as to what kind of specific arrangements you have with each one of those companies.

In other words——

Mr. VON RAAB. Yes, we will.

Mr. ANTHONY. If they are all treated equally or one gets more or less than others.

Mr. VON RAAB. The policy is to treat them equally.

Mr. ANTHONY. You can understand from my line of questioning that this is exactly what I am trying to determine, because there has been allegations that there was a sweetheart deal with former Customs agents running a $7 million company, net worth; has $94 million worth of claims; which you settled for 1.4 percent.

I want to find out if there is any fire to the smoke.

Mr. VON RAAB. Since you have raised this important issue, I refer you to our chief counsel who actually analyzed and make recommendations concerning all offers submitted by sureties in Project 600 and who can explain the terms on which we made any agreement with each of these individuals. I think it would be very useful if he can answer that question whether a sweetheart deal was made during that project.

I have the same, I won't say concern, but I am aware of the relationships between former Customs Officers and the Customs Service and for that reason it was the—the project was put with our chief counsel, who was not a member of the Customs Service, who reports to the Department.

[The following was subsequently received:]

Because the governing statute, 19 U.S.C. 1617 requires the recommendation (i.e., approval), of the Chief Counsel, the project was organized in such a manner that the Chief Counsel first had to recommend that an offer was acceptable, before Customs accepted any offer. Our Chief Counsel is not a member of the Customs Service but reports to the General Counsel of the Treasury.

Therefore, it is under his authority that any recommendations concerning the acceptability of any offers was placed. Of course, if he recommended such acceptance, the final decision to accept the offer was Customs.

Mr. ANTHONY. Would you be satisfied if he were able to do that in written form, rather than in oral form?

Mr. VON RAAB. As long as this committee is satisfied.

Mr. ANTHONY. I personally would be satisfied. Would that be satisfactory to the Chair? I make that request because my time has expired. I would love to have it orally, but——

Mr. VON RAAB. One fact on the record, that is, that the program, the authority and decisions in this program were jointly held, the authority to make recommendations to accept offers was held by the chief counsel, who does not report up through the Customs Service but reports directly to the General Counsel Treasury Department.

[The following was subsequently received:]

Without his recommendation, by statute, no offer can be accepted. The authority to decide to accept such offers was that of the Customs Service.

Mr. ANTHONY. It would perfectly satisfy me, Mr. Chairman, if it would satisfy you to get this first in writing, and if we have additional questions or additional information, we could followup. I think that would be the smoothest way to do it.

First of all, he is going to give me information I don't presently have. I would want to compare it with what I already know before I do follow-up questions.

Mr. CHANDLER. Mr. Chairman, can I yield some of my time to the gentleman to continue his questioning? I would like to save some, but I would be happy to yield some time so I can get the answer.

Chairman PICKLE. Do you want anymore time?

Mr. ANTHONY. It is a very serious allegation or Mr. von Raab wouldn't be willing to spread it on the public record, because it is a cloud over his agency and it is obviously something he would like to get in.

Mr. VON RAAB. Let's wait to see if it is a cloud or not.

Mr. ANTHONY. Maybe it is something—you didn't let me finish my explanation. It is something you would obviously like to have fully explained. I am making no allegation. I am repeating just the rumor mill. That is the purpose of these hearings, to try to——

Mr. VON RAAB. Well——

Mr. ANTHONY. To stamp out rumors.

Mr. VON RAAB. Chief counsel of the Customs Service and his superior is the General Counsel of the Treasury Department reports to the Secretary of the Treasury.

Mr. ANTHONY. If you would yield one quick second, I would like to submit this copy of a bill to you. I would like to ask that it be made part of the record, Mr. Chairman.

Bill here, bond number is missing, entry number is missing and the name and address of the importer is missing. Although you say you give it—I have one example where it wasn't given and that is one example of one surety who is going to have a difficult time. You have a good policy, but a policy not being implemented fully.

I offer this as an effort to assist you in providing better constituency service.

Mr. VON RAAB. Your characterization is 100 percent correct.

Mr. SCHMITZ. Congressman, the simple answer to your question is, no, there was no sweetheart deal. There was a submission for a settlement of 1.4 percent from one surety. That offer was rejected.

[The following was subsequently received:]

We refused to recommend acceptance of that offer by the Customs Service.

Mr. ANTHONY. Would you yield a moment? I will make this available to you, but I have in my possession a letter from the attorney that represents that particular company. Contained in that letter is a statement that goes as follows. And they are trying to negotiate on the settlements, and this is part of their proof to substantiate the reason Customs ought to yield in another area.

I quote, "The offer is based on the incontrovertible history that nearly 5,300 WIIC automobile claims have been canceled in the past, 2½ years involving over $94 million in demands. WIIC had in that time made payment of approximately $1,350,000 or 1.4 percent of the amount demanded. The offer reflects that ratio."

So if you would, when you give your explanation, explain to me why this paragraph in this lawyer's letter is incorrect.

Mr. SCHMITZ. What he is alluding to is his experience prior to this project 6,000. And that indeed was the same method upon which he wished to settle the cases that were in project 6,000. We rejected that. We went forward and negotiated other settlements that were well beyond the 1.4 percent. He was alluding to their practice from total billed allowed, which is deceiving itself because to take a fairly simple example, one is dealing with automobiles, is what he is talking about.

You may get a liquidated damage demand that may be several hundred thousand dollars. When they come forward ultimately with the EPA and DOT proof, the whole claim may be canceled. Other cases or claims are reduced and settled for $100, for example, late filings.

They may be assessed at the total value of the entry which may be in the millions, but ultimately settled for maybe $100. So the history is based on a figure that is assessed, that I don't even think the Customs Service ever expects to collect, but indeed we assess it at that rate so that we can protect all of the options of the Customs Service. So it is kind of a misleading figure that they are using.

Again, they tried to use it in their discussions with us because again what they were billed versus what they actually settled for, they may actually be correct as to what they settled for. I think it is part of our argument as to why, what is the value of the surety if you are talking in terms of 1.4 percent.

[The following was subsequently received:]

What he is alluding to is the surety's experience with Customs on claims canceled by the agency prior to Project 6000 and prior to his involvement in negotiating an acceptable offer for the Project 6000 claims. As the language of the letter indicates, those past claims arose and were canceled before Project 6000 began. It was the historical basis upon which he wished to settle the cases that were in Project 6000. We rejected that approach. We do not know why the agency canceled those prior 5,300 claims upon payment of $1,350,000, assuming the accuracy of the allegation. Those claims obviously were canceled pursuant to the agency's authority under 19 U.S.C. 1623(c) upon such terms and conditions as were deemed sufficient by the Customs officers who handled those claims. During that time frame, cases were handled by District Directors on a case-by-case basis. It was in Project 6000 that, for the first time, our office was involved in the process of negotiating acceptable offers in compromise of large groups of cases. The allegation that a sweetheart deal was made with respect to those prior claims is particularly spurious given the fact that at the time those claims were canceled, such claims were handled individually and not collectively. The factual statement in the referenced letter represents a composite of the individual actions of a very large number of Customs officers and we would assume not only different surety representatives, which must obviously have changed somewhat over the 2½ year period, but, in many cases, different importer representatives because the claims were probably canceled often in response to importers' petitions for relief rather than a surety petition. However, what had happened in the past was irrelevant to our consideration of the offers being submitted during Project 6000 because, based upon our analysis of the litigation risks associated with those claims, we had early on decided that a higher percentage offer was necessary before we would recommend acceptance of any offer by the agency. We went forward and negotiated settlements with all sureties that were well beyond the 1.4 percent offer originally submitted by WIIC.

With regard to the facts contained in the letter you are referencing, although unrelated to Project 6000, the attorney for WIIC was alluding to the surety's experience in settling those claims for a small percentage of the total billed amount. This is deceiving in itself. A surety may get a demand, a liquidated damage demand, that may be for several hundred thousand dollars representing the full value of the merchandise. When they or the importer comes forward ultimately with, as in car cases, the EPA and/or DOT proof of compliance, the whole claim may be canceled because the law has been ultimately complied with. Or, it may be canceled upon payment of a very nominal sum, say $100, for the technical violation of having failed to comply in a timely fashion. Other cases or claims for thousands of dollars are routinely canceled upon payment of a lesser amount in the range of $100. An example where this is rather routine is in the case of late filings of documents.

Liquidated damage claims are generally assessed at the total value of the merchandise entered. This may be in the millions, and ultimately settled for a couple of hundred dollars as in the above example when adequate proof of compliance with the law is submitted. The surety's historic settlement experience alluded to in the referenced letter is based on those figures. I don't even think the Customs Service ever expects to collect the amount assessed, but Customs assesses it at that rate to provide a deterrent to non-compliance with the law and to protect all of the options of the Customs Service. So the small percentage of recovery is kind of a misleading figure. The ultimate goal is not revenue, but rather compliance with the law and regulations relating to the entry of merchandise.

Again, attorneys for WIIC tried to use it in their discussions with us because they knew what they were billed versus what was actually paid for in the past. If they are correct as to what they settled for prior to Project 6000, I think it supports the agency's argument as to the value of the surety.

Mr. ANTHONY. You are not saying his ratio is incorrect.

Mr. SCHMITZ. No, but——

Mr. ANTHONY. You have a $7 million net worth company assigned $94 million worth of liquidated damages that settled out for $1.39 million.

Mr. SCHMITZ. That could be entirely possible with claims arising prior to Project 6000.

Mr. ANTHONY. I leave it up to each individual to determine what is the definition of sweetheart. I yield back the balance of my time.

Chairman PICKLE. The Chair will ask that you submit us some written statements on this issue or any other detail that you would care to. We must say to you that the rumor persists in the trade community that there is a sweetheart arrangement.

While that same type of rumor can be built up on any given set of facts, we do not make that accusation but we think it must be looked into and verified one way or another so far as we can.

We are anxious to receive your material on that because this is a strong allegation that ought to be settled one way or another.

Mr. VON RAAB. I agree. There were former Customs officers involved, a former deputy commissioner, former assistant commissioner, and I think it is appropriate for this committee to look into this and we will submit a complete narrative of what took place in the negotiation of this between the Washington International and the Department of the Treasury.

Chairman PICKLE. I am not sure I understood you, Mr. Commissioner. Are you saying that this arrangement originally started—was started by the previous commissioner, not you?

Mr. **von Raab**. The people involved in this were former employees of the Customs Service and for that reason, I think it is appropriate for this committee to look carefully at this.

Chairman **Pickle**. Well, we will do that, I assure you. Now, the Chair recognizes Mr. Chandler.

Mr. **Chandler**. Thank you, Mr. Chairman.

Mr. Commissioner, I want to ask about what I think we can characterize as a considerable number, if not numerous instances of aircraft owners and pilots conflicting with Customs agents. I would like to get your comments about some resolution of these problems.

I am not talking about drug traffickers. I am not talking about trying to inhibit your ability to deal with drug interdiction, absolutely not. I have had a number of briefings and I have had opportunities to visit and actually to fly with some of your agents.

I know they are dedicated. I know they are dealing in a dangerous business, and I know they are underpaid. So going in, though, let me ask unanimous consent, Mr. Chairman, to place in the record a number of letters that we have received from the Aircraft Owners and Pilots Association, documenting these kinds of problems.

[The information of Mr. Chandler follows:]

Peter Paul Luce
1728 Sixteenth Street
Boulder, Colorado 80302

January 7, 1988

Ms. Marilyn Ball, Flight Operations,
Aircraft Owners and Pilots Association
421 Aviation Way,
Frederick, Maryland 21701

Dear Ms. Ball,

I am writing to you at the suggestion of one of your staff assistants with whom I had a very pleasant telephone conversation today. I had called because I had just returned from a trip to the U.S. Virgin Islands and had unpleasant experiences with the U.S. Customs at both ends of the trip. Your assistant felt it would be helpful if I sent you all the pertinent details in the hopes that my story -- together with many others -- might bring about an improvement.

On Christmas Day, my wife and I and our son and daughter flew to Tamiami Airport, Miami, Florida to spend the night before flying on to St.Thomas the next day. We had chartered a sailboat and crew out of St.Thomas for one week. With all the concern at present about our country's large negative balance of payments, I felt that I might just as well do my part and spend the money for this expensive vacation in U.S. territory. What follows should explain why I feel that I should have spent my money elsewhere.

In order to avoid any difficulty, I telephoned Customs to determine whether we would have to land at an airport with Custom facilities upon our return from the U.S. Virgin Islands. I was assured that although St.Thomas Island is a part of the United States, we would definitely have to check-in with customs when we returned. That night I filed two IFR flight plans with the local FSS by telephone from my hotel room: one from Tamiami to South Caicos to refuel, and one from South Caicos to St.Thomas. I used the usual phrase "ADCUS" in the remarks section of the flight plan sequence, but it would seem that part of the flight plan NEVER GOT THROUGH. Whether the person who took my flight plan forgot to write that part down (along with the note that we had a 4-5 man life raft and four life vests on board); or whether the person he passed it along to didn't understand what it meant; or whether the message was lost because we took-off from South Caicos; I will probably never know where the break in the chain might have occurred. I later learned from the captain of the boat we had chartered that the electricity in St.Thomas was off for about four hours on the Saturday morning that we arrived. It seems that the electricity goes off quite often there, and when it does, the telephone system goes out of service too. So it is possible that someone tried to call Customs in St.Thomas about our arrival and couldn't get through and then forgot to try again later. The telephones being out of service that morning came up quite naturally in the conversation because the captain thought that we might have been trying to reach him as we were quite late due to the delay getting through Customs.

The Customs official in St.Thomas was extremely unpleasant because he had not been notified in advance of our arrival even though I tried to explain that I had done my part. He mentioned the fine could be as much as $5,000 including confiscation of the aircraft. It was beginning to sound like Mexico, not the U.S.A. I further explained that I had filed for flight level 270 all the way from Miami and accordingly had to be on an instrument flight plan and was therefore in continuous contact with the FAA throughout the entire trip. He then telephoned someone in the FAA and confirmed that I had been on an IFR flight plan, but when asked why he had not been notified of our arrival, the person at the FAA told him curtly that it was not their responsibility to notify Customs. Therefore it would seem that the FAA is exercising a strange lack of cooperation with Customs in these days of drug trafficking. When one branch of government won't help another, it certainly makes it a lot easier for the drug smugglers.

The Customs official then wrote up a form similar to the xerox copy enclosed, and went outside and put a large red sticker on the window of my plane to indicate that the plane was under seizure and should not be moved. I asked him if the glue was such that the sticker could be easily removed and whether it would react with the plexiglass. The reply I got indicated that he really didn't care. He then explained that first thing Monday morning, I should telephone the Customs office in downtown Charlotte Amalie and make an appointment to see the District Director or his assistant to get a final disposition of the offence.

We spent the rest of the week-end in a state of considerable anguish over the prospect of a $5,000 fine and the confiscation of my plane -- even if only temporarily. It felt like the longest week-end of my life! Then Monday morning, as instructed, I interrupted our very expensive charter to return to the town to visit the District Director. I made an appointment with his assistant for 11:00 AM and found him to be pleasant enough even though he kept repeating that it is the pilot's responsibility to notify Customs. That I had taken the necessary steps to do this, and could have no way of knowing that the message never got through seemed to make little difference to him. That I was in continuous contact with the FAA all the way from Miami seemed to make no difference. Had I thought to ask San Juan Center to notify Customs they would not have been able to get through because the telephones in St.Thomas were out of service that morning. The Assistant District Director did say that in St.Thomas they do not have the fancy computers that "they" have in the states where the notice to customs would automatically appear on a screen. It made me feel that perhaps he was hoping that I would know someone important and could get such a computer for him. It also made me wonder how I could be expected to know that the equipment in St.Thomas was all that different from the equipment in the states which would necessitate different procedures from those used in the states. Incidentally, you can be sure that during our flight home, I made a point of asking Miami Center to reconfirm that Customs had been notified of our arrival. I got a curt answer that it is done automatically by computer. I probably would have gotten the same answer had I asked San Juan Center on the way down. Gradually it became clear that when flying to St.Thomas it is essential to telephone Customs from the states before take-off.

Finally, the assistant said that because of the mitigating circumstances he would release the plane and close the case if I agreed to pay a $100 fine. Naturally, I agreed. What concerns me now isn't the $100, but whether my plane is on some list of suspected planes such that I will have more trouble with Customs in the future. ALL the Customs personel we spoke to seemed to delight in telling us of their power to take someone's plane apart (and not bother to put it back together) if they suspected it was carrying illegal items.

On our return trip we landed at Opa Locka Airport and checked in with Customs there. Although there was no difficulty, the general attitude of the three officials on duty was absolutely terrible.

The following facts and figures may be helpful to you:
My AOPA membership number is: 036619C.
My Pilot Licence number is: 901,691.
The aircraft registration number is: N100BY. (12 inches high.)
It is a 1979 Mitsubishi Marquise, type MU-2B-60.
The serial number is: 753 S.A.
We entered St.Thomas on December 26, 1987 and returned January 3, 1988 at Opa Locka Airport.

In summary, may I make the following observations:

1.) The AOPA could greatly help members flying into "our" Virgin Islands by strongly urging them to telephone U.S. Customs in Charlotte Amalie before leaving the states, and NOT rely on the "ADCUS" phrase in their flight plans. Thus they would avoid what we might call "circumstantial entrapment."

2.) Although we are all aware of the strain the FAA is under at present, they might be reminded that cooperation with the Customs branch of our government would help.

3.) Although we are also aware that Customs officers must occasionally deal with some pretty tough characters in their line of work, it should not be necessary for them to treat everyone as though they were suspect.

Please accept my apologies for the length of this letter. I felt that you would have a better chance of getting N100BY off of any suspect list if you had all the details.

I do thank you for your help.

Sincerely,

Peter Paul Luce

Peter Paul Luce

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

NOTICE OF PENALTY OR LIQUIDATED DAMAGES INCURRED
AND DEMAND FOR PAYMENT

19 CFR 18.6, 172.31

Case Number
88510150047

Port Name and Code
ST. THOMAS-5101

Investigation File No.

TO:
Peter Paul Luce
1728 Sixteenth Street
Boulder, Colorado 80302

Mitigated to $100.00 if paid on or before 1/28/88
Arthur A E,
1/28/88

DEMAND IS HEREBY MADE FOR PAYMENT OF $ 5,000.00, representing ☒ Penalties or ☐ Liquidated Damages assessed against you for violation of law or regulation, or breach of bond, as set forth below:

On Saturday, December 26, 1987 Aircraft N100BY, of which you were the pilot, arrived from foreign without having provided U.S. Customs with advance Notice of Arrival, which is contrary to Customs reporting requirements. Your Aircraft has been placed under constructive seizure pending payment of fines and penalties which are due under Section 3112, Paragraph (C), Section 433 of the Tariff Act.

LAW OR REGULATION VIOLATED	BOND BREACHED
19 USC 433	

DESCRIPTION OF BOND (If any)	Form Number	Amount	Date
		$	

Name and Address of Principal in Bond

Name and Address of Surety on Bond
Surety Identification No.

If you feel there are extenuating circumstances, you have the right to object to the above action. Your petition should explain why you should not be penalized for the cited violation. Write the petition as a letter or in legal form; submit in (duplicate) (triplicate), addressed to the Commissioner of Customs, and forward to the District Director of Customs at

U.S. Customhouse, Federal Building, 2nd Floor, St. Thomas, V.I. 00801

Unless the amount herein demanded is paid or a petition for relief is filed with the district director of customs within the indicated time limit, further action will be taken in connection with your bond or the matter will be referred to the United States Attorney.

TIME LIMIT FOR PAYMENT OR FILING PETITION FOR RELIEF (Days from the date of this Notice) 30 days

Signature: Arthur A E,
By R. C. Muser

Title: District Director

Date: December 28, 1987

94-717 1169

Customs Form 5955A (012386)

Department of the Treasury
United States Customs Service

NO. 67976685

CASH RECEIPT

RECEIVED OF Peter Paul Luce

ADDRESS 1728 Sixteenth St.
Boulder, Col.

CUSTOMS OFFICER	DATE	CASE NO.
EBlyden		

ACCT. CLASS. CODE	USER CHARGE CODE	REMARKS	AMOUNT	
321		Failure to give	100	-
		advance notice		

PAID

DEC 28 1987

U.S. CUSTOMS SERVICE
ST. THOMAS, V.I.

Customs Officer Shall Check Applicable Statements

☐ The Duty Assessment Is Liquidated.

TOTAL 100 -

Space below for use in collections relating to a violation of law.

COMMENTS

SECTION OF LAW VIOLATED:

☐ Section 497 Tariff Act 1930 Failure to Declare

☐ Section 592 Tariff Act 1930 False Declaration

☒ Section 19USC 433
(Other Citation)

NOTE: Importer may protest duties which are believed to be incorrect. Protest must be filed on Customs For 19 (or an exact copy) within 90 days of liquidation date. Direct protest to issuing port, accompanied by th receipt or a copy.

ORIGINAL - Payer's Receipt
DUPLICATE - Collection Copy
TRIPLICATE - Record Copy

Customs Form 5104 (4-5-74

Peter Paul Luce
1728 Sixteenth Street
Boulder, Colorado 80302

February 6, 1988

Ms. Marilyn Ball, Flight Operations
Aircraft Owners and Pilots Association
421 Aviation Way
Frederick, Maryland 21701

Dear Ms. Ball,

I am enclosing for your information a copy of the letter I have sent to Mr. Heavy in the Miami Customs office. It seemed reasonable to me that you should have a copy of what I had sent him. It occurred to me that you might like to show it to your contact in the Washington Customs office. You may note that it makes no mention of the AOPA.

As per your suggestion, I have indicated that copies were sent to both our Colorado Senators and to the Congressman representing the district where I live and to the Congressman representing the district where my office is located. The latter is David Skaggs whom I have known for about 15 years and who is on the Aviation Subcommittee. I have actually sent the copies to them as indicated.

I do want to thank you for all your help in this matter. We have a trip to the Bahamas with my in-laws planned for the latter part of March. I hope there won't be any complications.

Sincerely,

Peter Paul Luce

Peter Paul Luce.

(AOPA # 036619C)

Peter Paul Luce
1728 Sixteenth Street
Boulder, Colorado 80302

February 4, 1988.

Mr. George Heavy, Regional Commissioner,
United States Custom Service, S.E.Region,
99 Southeast Fifth Street
Miami, Florida 33131

Dear Mr. Heavy,

I have been requested to write to you by personnel in the Washington Customs office in order to make you aware of the recent unfortunate experiences with the U.S. Customs that I had on a trip to the U.S. Virgin Islands. I must apologize for the length of this letter, but I felt it would be helpful if I sent you all the pertinent details in the hopes that my story -- together with others -- might bring about an improvement.

On Christmas Day, my wife and I and our son and daughter flew in our plane to Tamiami Airport, Miami, Florida to spend the night -- before flying on to St.Thomas the next day. We had chartered a sailboat and crew out of St.Thomas for one week. With all the concern at present about our country's large negative balance of payments, I felt that I might just as well do my part and spend the money for this expensive vacation in U.S. territory. What follows should explain why I feel that I should have spent my money elsewhere.

In order to avoid any difficulty, I telephoned Customs in Miami to determine whether we would have to land at an airport with Custom facilities upon our return from the U.S. Virgin Islands. I was assured that although St.Thomas Island is a part of the United States, we would definitely have to check-in with customs when we returned. That night I filed two IFR flight plans with the local FSS by telephone from my hotel room: one from Tamiami to South Caicos to refuel, and one from South Caicos to St.Thomas. I used the usual phrase "ADCUS" in the remarks section of the flight plan sequence, but it would seem that part of the flight plan NEVER GOT THROUGH. Whether the person who took my flight plan forgot to write that part down (along with the note that we had a 4-5 man life raft and four life vests on board); or whether the person he passed it along to didn't understand what it meant; or whether the message was lost because we took-off from South Caicos; I will probably never know where the break in the chain might have occurred. I later learned from the captain of the boat we had chartered that the electricity in St.Thomas was off for about four hours on the Saturday morning that we arrived. It seems that the electricity goes off quite often there, and when it does, the telephone system goes out of service too. So it is possible that someone tried to call Customs in St.Thomas about our arrival and couldn't get through and then forgot to try again later. The telephones being out of service that morning came up quite naturally in the conversation because the captain thought that we might have been trying to reach him as we were quite late due to the delay getting through Customs.

The Customs official in St.Thomas was extremely unpleasant because he had not been notified in advance of our arrival even though I tried to explain that I had done my part. He mentioned the fine could be as much as $5,000 including confiscation of the aircraft. It was beginning to sound like Mexico, not the U.S.A. I further explained that I had filed for flight level 270 all the way from Miami and accordingly HAD to be on an instrument flight plan and was therefore in continuous contact with the FAA throughout the entire trip. He then telephoned someone in the FAA and confirmed that I had been on an IFR flight plan, but when asked why he had not been notified of our arrival, the person at the FAA told him curtly that it was not their responsibility to notify Customs. Therefore it would seem that the FAA is exercising a strange lack of cooperation with Customs in these days of drug trafficking. When one branch of government won't help another, it certainly makes it a lot easier for the drug smugglers.

The Customs official then wrote up a form similar to the xerox copy enclosed, and went outside and put a large red sticker on the window of my plane to indicate that the plane was under seizure and should not be moved. I asked him if the glue was such that the sticker could be easily removed and whether it would react with the plexiglass. The reply I got indicated that he really didn't care. He then explained that first thing Monday morning, I should telephone the Customs office in downtown Charlotte Amalie and make an appointment to see the District Director or his assistant to get a final disposition of the offence.

We spent the rest of the week-end in a state of considerable anguish over the prospect of a $5,000 fine and the confiscation of my plane -- even if only temporarily. It felt like the longest week-end of my life! Then Monday morning, as instructed, I interrupted our very expensive charter to return to the town to visit the District Director. I made an appointment with his assistant for 11:00 AM and found him to be pleasant enough even though he kept repeating that it is the pilot's responsibility to notify Customs. That I had taken the necessary steps to do this, and could have no way of knowing that the message never got through seemed to make little difference to him. That I was in continuous contact with the FAA all the way from Miami seemed to make no difference. Had I thought to ask San Juan Center to notify Customs they would not have been able to get through because the telephones in St.Thomas were out of service that morning. The Assistant District Director did say that in St.Thomas they do not have the fancy computers that "they" have in the states where the notice to customs would automatically appear on a screen. It made me feel that perhaps he was hoping that I would know someone important and could get such a computer for him. It also made me wonder how I could be expected to know that the equipment in St.Thomas was that different from the equipment in the states which would necessitate different procedures from those used in the states. Incidentally, you can be sure that during our flight home, I made a point of asking Miami Center to reconfirm that Customs had been notified of our arrival. I got a curt answer that it is done automatically by computer. I probably would have gotten the same answer had I asked San Juan Center on the way down. Gradually it became clear that when flying to St.Thomas it is essential to telephone Customs from the states before take-off.

Finally, the assistant said that because of the mitigating circumstances he would release the plane and close the case if I agreed to pay a $100 fine. Naturally, I agreed. What concerns me now isn't the $100, but whether my plane is on some list of suspected planes such that I will have more trouble with Customs in the future. Every one of the Customs personel we spoke to seemed to delight in telling us of their power to take someone's plane apart (and not bother to put it back together) if they suspected it was carrying illegal items.

On our return trip we landed at Opa Locka Airport and checked in with Customs there. Although there was no difficulty, the general attitude of the three officials on duty was absolutely terrible.

The following facts and figures may be helpful to you:

My home phone number: 303-781-1078.
Office number: 303-447-2525.
My Pilot Licence number is: 901,691.
The aircraft registration number: N100BY. (12 inches high)
It is a 1979 Mitsubishi Marquise, type MU-2B-60.
The serial number is: 753 S.A.
We entered St.Thomas on December 26, 1987 and returned January 3, 1988 at Opa Locka Airport.

In summary, may I make the following observations:

1.) The Customs Service could greatly help pilots flying into "our" Virgin Islands by strongly urging them to telephone U.S. Customs in Charlotte Amalie before leaving the states, and NOT rely on the "ADCUS" phrase in the remarks section of their flight plans. Thus they would avoid what we might call "circumstantial entrapment."

2.) Although we are all aware of the strain the FAA is under at present, they might be reminded that cooperation with the Customs branch of our government would help.

3.) Although we are also aware that Customs officers must occasionally deal with some pretty tough characters in their line of work, it should not be necessary for them to treat everyone as though they were suspect.

Please accept my apologies for the length of this letter. I felt that I would have a better chance of getting your help to get N100BY off of any suspect list if you had these details.

I do thank you for your help.

Sincerely,

Peter Paul Luce

Peter Paul Luce

cc: Senator William Armstrong
Senator Timothy E. Wirth
Congressman David Skaggs
Congressman Dan Schaefer

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
MIAMI, FLA.

[illegible]

REFER TO
AIR-1-O:I PZ

Mr. Peter Paul Luce
1728 Sixteenth Street
Boulder, CO 80302

Dear Mr. Luce:

This is in reply to your letter of February 4, 1988 concerning your Customs processing in St. Thomas, U.S. Virgin Islands in December. I regret that you were left with such an unfavorable impression of our Agency. On March 3 - 4, a member of my staff visited the St. Thomas office and personally reviewed your case.

As a result of her visit a meeting between FAA personnel and Customs will be held in order to help assure that the ADCUS messages processed by the San Juan flight services center are transmitted to U.S. Customs. Although you did file your flight plan and include the ADCUS message please note that the Private Flyers Guide (a copy is enclosed) specifically addresses short flights of less than 1 hour on page 8. As noted there, FAA cannot guarantee delivery of the message to Customs in sufficient time so the responsibility is on the pilot to advise Customs directly. Accordingly, the mitigation of your penalty to $100.00 was an appropriate action. The payment of the mitigated penalty is a matter of record with Customs but should not result in future "trouble" provided you give the notifications required prior to your future arrivals.

Customs Inspectors are human, and as such are incapable of determining whether a person is in violation of the law strictly by observation. Questioning and inspection are an integral part of the performance of the Inspector's duties. The types of questions asked and the reasons for certain actions being taken are often not readily apparent to the traveling public which frequently results in a misunderstanding of the Inspector's role. Nonetheless, our Inspectors are expected to exercise courtesy and professionalism. This was fully discussed with the St. Thomas district managers during my staff member's visit.

REPLY TO: REGIONAL COMMISSIONER OF CUSTOMS, MIAMI, FLORIDA 33131

I do appreciate your taking the time to advise me of this matter and I feel that your concerns have been adequately addressed. I trust that you will find future contacts with the Customs Service to be more pleasant and that when that occurs you will advise me as you have done in this instance.

Sincerely,

George D. Heavey
Regional Commissioner

cc: District Director, St. Thomas

Peter Paul Luce 1728 Sixteenth Street, Boulder, Colorado 80302

June 16, 1988.

Ms. Marilyn Ball, Flight Operations
Aircraft Owners and Pilots Association
421 Aviation Way,
Frederick, Maryland 21701

Dear Ms. Ball,

Thank you for your recent telephone call in which you requested a copy of the letter I got from George Heavey, Regional Commissioner of Customs. I finally managed to find it and enclose herewith your copy.

As I may have mentioned on the phone, he mentioned that they can't get the message through if the flight is less than an hour long... obviously. He must have thought I was flying a Mitsubishi Jet not the MU-2 Prop-jet. For the record, I have found the following in my log-book:
We were off Tamiami Airport, Miami at 6:38 AM and the flight to South Caicos took 2 hours, 11 minutes, and 3 seconds. Then we were off South Ciacos at 9:48(Eastern Standard Time) and that leg took one hour, 45 minutes, and 47 seconds.

Well, I don't suppose it is worth the trouble to write back to Mr. Heavey and explain that EACH leg was more than one hour long. And so there should have been enough time to get the ADCUS message through to Customs one hour before our arrival. Further, he probably didn't read my letter very carefully, as I mentioned how the phones were out of service on St.Thomas that morning due to a power failure.

Many thanks again for all your help.

All Best regards,

BIOLAB **EQUIPMENT CANADA LTD.**

TORONTO
Telephone (416) 844-2062
MONTREAL
Telephone (514) 331-9015

March 14, 1988

AOPA
421 Aviation Way
Frederick, MD
USA 21701

Attention: Marylin Ball

Dear Ms. Ball,

It was a pleasure speaking with you by telephone earlier today. We are encouraged to learn AOPA are actively interested in the quality of service provided aviators by The United States Customs Service.

Please allow us to outline a recent unpleasant encounter.

Date: January 30, 1988

Touchdown time: 3:05 p.m.

Location: FXE (Fort Lauderdale Executive)

Aircraft: Mooney M20K C-GWRB Owned by Biolab Equipment Limited

Origin of Flight: Grand Cayman Island

Purpose: Private Business and Pleasure

Occupants: 2 Canadians

Type of Flight: IFR

After an "on time" arrival at customs and a reasonable inspection of our baggage, we were informed by (in our opinion) a "belligerent" U.S. customs inspector, that our aircraft was illegal due to 15 cm (6 inch) registration marks on the tail.

We responded to the effect "I am happy you mentioned this as we have been concerned and have recently contacted Transport Canada (the Canadian equivalent of the FAA) in this regard. We were referred to ANOII, No. 1 pages 1 through 4 (copies attached). We were informed by Transport Canada that as the operator of a Canadian aircraft we must conform to these regulations. While various countries in various parts of the world may have somewhat different rules it could perhaps be impossible to conform strictly to all of them. However; bilateral agreements exist between Canada and most countries and in particular between Canada and the USA, permitting operation of a Canadian airplane in American airspace or an American airplane in Canadian airspace when equipped and maintained in accordance with the country of registry."

The customs inspector was not interested in hearing this. He was certain we were in the wrong and he indicated he could seize our aircraft and/or fine us $500.00.

Because of this man's attitude the writer elected not to provoke him further by asking for his badge number. No doubt records are kept as to who was on duty at the time of our arrival.

Apparently three issues exist:

1) The unpleasant attitude of a United States Customs Officer.

2) His lack of information or possession of incorrect or incomplete information.

3) The issue of Canadian aircraft being exempt of those regulations contained in 45.29.

It should be noted Mr. W. Peppler of COPA has contacted Mr. John Yodice seeking counsel concerning the issue of 12" letters and Canadian aircraft.

Your review of this matter is appreciated.

Yours truly,

Biolab Equipment Canada Ltd.
per:

Charles Woolacott

Charles Woolacott
President

c.c. COPA
77 Metcalfe Street
Ottawa, Ontario
Canada K1P 5L6
Attn: Mr. W. Peppler

CW:LY
Encls.

Mr John yodice AOPA counsel in Washington

SOR/82-308
Registered on March 11, 1982
Effective Date: May 13, 1982

ANO II, No. I
Page 1 of 4

AIR NAVIGATION ORDER, SERIES II, NO. I

ORDER RESPECTING AIRCRAFT NATIONALITY AND REGISTRATION MARKS

Short Title

1. This Order may be cited as the Aircraft Nationality and Registration Marks Order.

Interpretation

2. In this Order,
"left side" means the left side of an aircraft when facing forward from the pilot's seat of that aircraft; (côté gauche)
"marks" means both the nationality and registration marks indicated in section 222 of the Air Regulations; (marques)
"nationality mark" means the mark composed of the letter or the group of letters indicated in subsection 224(1) of the Air Regulations and required by subsection 222(2) of those Regulations to be painted on or otherwise affixed to an aircraft; (marque de nationalité)
"registration mark" means the mark composed of the letters assigned to an aircraft by the Minister pursuant to subsection 224(2) of the Air Regulations and required by subsection 222(2) of those Regulations to be painted on or otherwise affixed to an aircraft. (marque d'immatriculation)

Application

3. (1) Subject to subsection (2), this order applies to all Canadian aircraft.

(2) Paragraph 4(e), section 6 where it relates to rotorcraft, sections 6 and 7 where marks are required to be displayed in a parallel direction with the longitudinal axis of the aircraft and paragraph 11(a) do not apply prior to May 12, 1987 to Canadian aircraft registered on or before May 13, 1982.

General

4. The marks shall
   a) except as provided in section 5, be painted on or affixed to an aircraft by any means that ensures a similar degree of permanence;
   b) consist of capital letters in Roman characters without ornamentation or serifs;

c) be separated by a hyphen following the nationality mark;
d) be formed by solid lines clearly contrasting in colour with the background;
e) have a margin of at least 5 cm (2 inches) between the outline of the marks and the visible outline of the surface on which they are displayed; and
f) be legible.

5. Marks may be affixed to an aircraft with material that is readily removable but which is not likely to become detached or erased during flights for the purpose of manufacturer's production test flights and delivery flights to or from a foreign country.

Location of Marks

Heavier-than-air aircraft

6. (1) On heavier-than-air aircraft the marks shall be displayed

(a) once on the bottom surface of the lowest wing, or in the case of rotorcraft, once on the bottom surface of the fuselage or cabin and in a parallel direction with the longitudinal axis of the aircraft; and
(b) in a parallel direction with the longitudinal axis of the aircraft, once on each side of
  (i) the fuselage or the equivalent structure,
  (ii) the upper halves of the vertical tail surfaces, or
  (iii) the tail booms.

(2) Marks displayed on the wing may either extend from wing tip to wing tip or be located on the left wing only but in either case the marks shall be equidistant, to the extent possible, from the leading and trailing edges and have the tops of the letters towards the leading edge.

(3) Marks displayed as prescribed for rotorcraft in paragraph (1)(a) shall be arranged with the tops of the letters toward the left side.

(4) Marks displayed on the fuselage or the equivalent structure shall be located between the wings and tail surface but if engine pods or other appurtenances occupy that area and are an integral part of the fuselage side surfaces, the marks may be located on the outboard surfaces of those pods or appurtenances.

(5) Marks displayed on rotorcraft fuselages or their equivalent as required in paragraph (1)(b) shall be located below the window line or as near to the cockpit as posible.

(6) Marks displayed as prescribed in subparagraphs (1)(b)(ii) and (iii) shall be located on both side surfaces of single vertical tails and single tail booms and on the outboard surfaces of multi-vertical tails and multi-tail booms.

Lighter-than-air aircraft

7. (1) On airships the marks shall be displayed either
   (a) in a parallel direction wth the longitudinal axis of the airship, once on each side of the hull or envelope and on the uppermost surface of the hull or envelope; or
   (b) on the horizontal and vertical stabilizers.

(2) Marks displayed on the sides of airships shall be located as near as possible to the maximum width taken from transverse cross-sections but not where they cannot be discerned from a ground point directly beneath them.

(3) Marks displayed on the uppermost surface of the airship shall straddle, to the extent possible, the plane of symmetry and be arranged with the tops of the letters towards the left side.

(4) Marks displayed on horizontal stabilizers of the airship shall apear once on the upper right surface and once on the lower left surface, with the tops of the letters toward the leading edges.

(5) Marks displayed on vertical stabilizers of the airship shall be located on their bottom halves, appearing, in a parallel direction with the longitudinal axis of the airship, once on both surfaces of single vertical stabilizers or once on both outboard surfaces of multi-vertical stabilizers.

8. On spherical balloons the marks shall be displayed once either vertically or horizontally at each of two diametrically opposite positions near the maximum horizontal circumference of the envelope.

9. On non-spherical balloons the marks shall be displayed once either vertically or horizontally on each side near the maximum horizontal cross-section of the envelope immediately above the rigging band or the points of attachment of the basket suspension cables.

10. The side marks on all lighter-than-air aircraft shall be visible from the sides and the ground.

Size of Marks

11. All letters in individual marks shall be of equal height and shall conform to the size requirements prescribed hereunder:
   (a) the minimum height of all the marks on heavier-than-air aircraft shall be 15 cm (6 inches) except for those on the wing surfaces which shall be 50 cm (20 inches) and those on the bottom surface of rotorcraft fuselages or cabins which shall be four fifths as high as the width of the fuselage or cabin or 50 cm (20 inches) whichever is less;

b) the height of the marks on all lighter-than-air aircraft shall be at least 50 cm (20 inches);

c) the width of all letters shall be two-thirds of their height except for the letter "I" whose width shall be one sixth of its height, and the letters "M" and "W" whose width shall be not more than their height;

d) the length of the hyphen shall be two-thirds of the height of a letter;

e) the thickness of the lines of the marks shall be one sixth of the height of a letter; and

f) the space between each letter and hyphen shall not be less than one quarter of the width of the letter "C".

12. Where the configuration of an aircraft precludes the marks from being displayed in accordance with this Order, the Minister may approve an alternate mark location or size of both.

builder's serial number must be legible to a person on the ground and must be located either adjacent to and aft of the rear-most entrance door or on the fuselage near the tail surfaces. The model designation and builder's serial number must be displayed in such a manner that they are not likely to be defaced or removed during normal service.

5. Section 45.21 is amended by revising paragraph (d)(3) to read as follows:

§ 45.21 General.

* * * * *

(d) * * *

(3) It is marked temporarily to meet the requirements of § 45.22(c)(1) or § 45.29(h) of this part, or both.

6. Section 45.29 is amended by revising the introductory text of paragraph (b) and adding a new paragraph (h) to read as follows:

§ 45.29 Size of Marks.

* * * * *

(b) *Height.* Except as provided in paragraph (h) of this part, the nationality and registration marks must be of equal height and on—

* * * * *

(h) After December 8, 1987, each operator of an aircraft penetrating an ADIZ or DEWIZ shall display on that aircraft temporary or permanent nationality and registration marks at least 12 inches high.

PART 91—GENERAL OPERATING AND FLIGHT RULES

7. The authority citation for Part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 S A . 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

8. Section 91.27 is amended by adding a new paragraph (c) to read as follows:

§ 91.27 Civil aircraft: Certifications required.

* * * * *

(c) No person may operate an aircraft with a fuel tank installed within the passenger compartment or a baggage compartment unless the installation was accomplished pursuant to Part 43 of this chapter, and a copy of FAA Form 337 authorizing that installation is on board the aircraft.

9. Section 91.173 is amended by revising paragraph (c) and adding a new paragraph (d) to read as follows:

§ 91.173 Maintenance records.

* * * * *

(c) The owner or operator shall make all maintenance records required to be kept by this section available for inspection by the Administrator or any authorized representative of the National Transportation Safety Board (NTSB). In addition, the owner or operator shall present the Form 337 described in paragraph (d) of this section for inspection upon request of any law enforcement officer.

(d) When a fuel tank is installed within the passenger compartment or a baggage compartment pursuant to Part 43, a copy of the FAA Form 337 shall be kept on board the modified aircraft by the owner or operator.

Issued in Washington, D.C., on September 1, 1987.

T. Allan McArtor,
Administrator.

[FR Doc. 87–20806 Filed 9–8–87; 8:45 am]

BILLING CODE 4910-13-M

90 day compliance period
beginning 12/8/87

Bill
Peppler

Must be in compliance on
3/9/88

(613-
236 4901

us customs service

Jan 30/88
20:05
utc

E
5575 NW 15th Ave
33309. port Everglades
P.O B 13123
33316

THE EASTERN-HARRIS GROUP, INC.

7000 S.W. 62nd AVENUE, PENTHOUSE C
SOUTH MIAMI, FLORIDA 33143 USA

(305) 666-4338
FAX: (305) 665-7686
TELEX: 910-240-7126 EASTERN-HARRIS UQ

June 13, 1988

Mr. Garnet Fee
Assistant Regional Commissioner (Operations)
U. S. Customs Service
U. S. Department of the Treasury
Brikell Plaza Building
909 S.E. First Avenue
Miami, Florida 33131

Dear Mr. Fee:

Thank you for taking the time to speak to me on the phone last week. Per your request, I am sending you this letter.

I make anywhere from one to three trips per week into Miami from foreign ports. These trips are in the course of transacting our normal, routine business, as well as our operations as a U. S. Certificated Air Carrier.

I not only find the majority of the U.S. Customs Inspectors anywhere from surly to rude, curt, antagonistic and totally disrespectful, not to speak of the fact that they are representatives of our government, and are usually the first person a visitor is "greeted" by, when they enter our country. I have been embarrassed, and very disappointed in the attitude displayed. Perhaps the thought of classes in courtesy and human relations would be of help. Most of these problems occur at Opa Locka Airport, however the other facilities in the Miami-Ft.Lauderdale area are not without fault.

On the other side of the coin, I have found a few Inspectors who are pleasant, courteous, helpful and true professionals, however, they are truly in the minority.

Now, into the matter of inspection procedures. I object to a customs officer arbitrarily taking screws out of my aircraft, especially if he/she is unfamiliar with my plane. I have had them damage my plane with the electric screw guns they use, and scrape the paint with their belts and equipment thereon, only to have them deny that they have done the damage. I just spent eight thousand dollars on painting my plane and don't wish to have the paint marred any further by untrained personnel. I have also had Inspectors remove parts from my aircraft and then hand me a red piece of paper advising me that my aircraft may not be airworthy, as they have removed parts and advised me to have the aircraft inspected by a FAA certified mechanic prior to flight. Why should I have to stand that expense and delay of my trip schedule? If Customs wishes

An Affiliate of Trans-Continental Agencies, Inc.

to take an aircraft apart, I suggest that they employ FAA certified mechanics to perform the inspections, and then certify that the planes are in the same condition as when they found them prior to the inspection. That would at least "soften the blow". There have been at least six occasions that I have found screws, washers, and fasteners missing and/or laying on the floor of the aircraft. I have requested to accompany the Inspector during the course of the inspection and was refused repeatedly. We must come to a mutually agreeable procedure.

I also am aware that there have been customs officers who have "planted" contraband in vehicles in order to make a seizure, and as much as my integrity is questioned, I have to have to be careful of a "bad" customs officer, and feel that I have the right to either accompany the inspector or have my representative present, in order to protect my interests and to insure that nothing is "planted" in my aircraft. I have been threatened that if I "pressed the issue", they would even "take the wings off" of my plane and purposely cause undue delays should I fail to "do things my way". Also, just for the record, the vast majority of the Inspectors, either have had little, or no training in searching general aviation aircraft, as their procedures are absolutely useless, and an insult to the Customs Service, as well as to the public.

Just as a side note, there are no standard operating procedures that we have seen at any of the Customs facilities in the South Florida area. How can you expect an aircraft operator to contend with a constant changing of requirements.

It seems as the least they can do is leave things in and out of the aircraft as they found them, ie: zippers zipped, fasteners fastened, things found orderly, left orderly. I shouldn't have to go behind them as you would expect with children and put things back as they were before the inspection was instituted. I have even had one Inspector open my suitcase, inspect the contents and then close the suitcase, with the latch mechanism piercing a brand new formal shirt, which I didn't discover until I arrived at my residence. On my next trip, I mentioned the problem, and was told "that's tough, sue Customs". I feel that a better and proper way to handle that, as well as any other damage claims would be a proper explanation and an offer to explain how to file a claim for the damages incurred. I still would like to be compensated for all of the damages previously incurred.

As we have discussed the fact that I am a sworn law enforcement officer employed at the present time as a part-time officer after retiring from full-time service. As such, I am acutely aware of the problems facing South Florida, and obviously very sympathetic to the problems facing our law enforcement personnel. However, I have never found an excuse for unprofessional conduct, and discourtesy to the public. In fact, I have probably let many of these problems go on much too long without lodging a complaint. However, fearing retaliation and retribution, I have been very hesitant to complain.

I have even had an incident, questioning Federal Aviation Administration Regulations. I recognize the spirit of cooperation between agencies, but, I resent the fact, that when I quote to the Inspector the pertinent FAA Regulation (after checking with FAA headquarters in Oklahoma City, where I was told to advise the Customs Officer to "read their regulations"), I was then advised that it was "for my own good"; if I didn't want them (customs) to tear my airplane apart, cause undue delays and expensive repairs;-comply. Why should an upright citizen, with a flawless law enforcement record of over twenty years be forced to listen and put up with this type of intimidation and empty threats.

Now, I, among others are, as the saying goes, mad as hell and not going to take it any more. We're tired of being treated like garbage, bullied, lied to, threatened, maligned, inconvenienced beyond reason, and being dealt with with, in an unprofessional, crude and disrespectful manner.

The Opa Locka facility never has enough forms and has no booklets. I have even had to fill out forms written in Spanish, and I don't read or write Spanish. What an insult to American citizens; requiring him or her to fill out a required form written in a foreign language he or she can't read or understand! This is still the United States of America.

I have had occasions when the facilities didn't have receipts or change for the payment of overtime fees. I have also had times when I have purposely delayed my flight to arrive in conjunction with the opening of a Customs facility, only to have the facility unmanned, and had to wait over an hour for an Inspector to come to Opa Locka from Miami International, under the threat of having my aircraft seized if I didn't wait. If I am late arriving, I have to pay a twenty-five dollar overtime fee; what recourse do I have? My time is valued by the company at $150.00 per hour!

Why can't Customs specify and print a set of procedures and requirements as well as even pertinent regulations for the private and commercial operators of light aircraft? In my thinking, it surely would standardize operations, increase efficiency and insure a better service for all concerned.

I think most of the problems indicated above could be averted by a cadre of Inspectors that have a minimum of interpersonal relationship knowledge necessary to function in the capacity of one who is required to deal with the public on a routine basis.

I look forward to the favor of your reply in the very near future.

Sincerely,

THE EASTERN-HARRIS GROUP, INC.

Tomas H. Ratner, President

McCORMIX CORP.
Wholesale petroleum and chemical products

22 North Salsipuedes Street
P.O. Box 848
Santa Barbara,
CA 93102-0848
(805) 962-5888

March 17, 1988

Marilyn Ball
A.O.P.A.
421 Aviation Way
Frederick, Maryland 21701

Dear Marilyn,

In pertinent to our telephone conversation of March 16, 1988, attached is a copy of my letter to Congressman Logomarsino with the problems I had with U.S. Customs.

If you have any questions or problems, please do not hesitate to call, or if I can be of any assistance in this Customs matter.

Sincerely,

Bert W. Mc Cormack

BWMc/sr

ENCLOSURE

McCORMIX CORP.
Wholesale petroleum and chemical products
22 North Salsipuedes Street
P.O. Box 848
Santa Barbara,
CA 93102-0848
(805) 962-5888

December 16, 1987

Honorable, Robert J. Logomarsino
House of Represenatives
19th District Office
814 State Street
Santa Barbara, California 93101

Dear Congressman,

At approximately 1:15 p.m., Sunday, December 13, 1987, I was flying VFR from Guaymas, Mexico to Calixco, California to check through U.S. Customs at Calixco. We were on a return trip from Santa Barbara Aero Medicos clinic at the Yaqui Indian village in Potam, Mexico. We fly to the clinic once a month to help out the Yaqui Indians. The trip always takes about 2 hours and 15 minutes to 2 hours and 30 minutes. However, on this day we encountered 72 knot head winds and it took us 4 hours and 8 minutes. My plane, a Bonzana A-36, had 5 hours of fuel on board when we took off from Guaymas, more than enough fuel for a 2 hour and 30 minutes flight.

When we got close enough to the U.S. to raise San Diego Flight Service, I asked them for the weather at Calixco. They replied that Calixco was reporting 39 to 45 m.p.h. winds from 330 degrees. The runway at Calixco is 260 degrees which meant I had a 70 degree cross wind, which would give me a cross wind component of 38 knots. My plane, a Bonzana A-36, is only designed for a 17 knot cross wind component.

When I found this out I called San Diego Flight Service and asked to change my flight plan form Calixco to Brown Field in San Diego, which they did. However, when I did a fuel calculation, I found out I did not have enough fuel to safely get to San Diego. I then called San Diego Flight Service again, and told them I had to go to Calixco because of my fuel situation, and for them to notify U.S. Customs.

On arrival at Calixco I had less than an hours fuel on board. This left me with no option but to make a landing at Calixco. So, I made a normal cross wind landing approach. However, I could not hold the plane straight due to the gusting winds. I went around and tried it again. The airport manager came on the Unicom 122.8 to give me some tips on getting down with these strong winds and also to warn me that there was strong wind shear. I made a second attempt and the wind was even worse than the first time. I had to do another missed approached. The airport manager came back on the radio to tell me not to try it again, because it was too dangerous. He recommended that I go to Yuma which was closer than Brown Field.

I cleaned up the airplane and then called San Diego Flight Service and asked them for weather at Yuma. They said for me to call Prescott radio for the weather, which I did. Prescott radio told me the weather at Yuma was gusting to 40 m.p.h., with 1 mile visibility and strong wind shear. This made Yuma worse than Calixco, because 1 mile visibility made it IFR flying and I am not IFR rated. I asked Prescott radio permission to land at Imperial because Imperial ran at 330 degrees, which made the wind right down the runway, and I would not be doing a cross wind landing. Prescott radio came back and stated I would have to ask San Diego Flight Service because Imperial was in their area. I contacted San Diego Flight Service again and asked them for permission to land at Imperial because of high winds, and because I did not want to endanger my 3 passengers in another attempt to land at Calixco, and because I did not think I could make a safe landing without crashing. I did not have enough fuel to get to San Diego.

San diego Flight Service came back on the radio and stated that they did not have the authority to grant permission to me. I replied that due to the high winds and my low gas situation and the safety of all my passengers, I was going to land at Imperial, and would they please contact U.S. Customs and tell them my intentions and that I would also call them when I landed.

I made a landing at Imperial at approximately 1:30 p.m.. After landing and while still rolling out, I contacted Imperial Flight Service and told them I had landed and to please let U.S. Customs know, and asked them to let me know what I should do. Imperial Flight Service stated for us to come into their office and stay there until customs arrived, which we did.

We waited in Imperial Flight Service office with Flight Service specialist Edward G. Mac Donald. Mr. Mac Donald stated to me that the airport manager at Calixco had just called him and wanted to know the procedure to close Calixco airport because he did not believe it was safe to land planes there with a 25 degree cross wind component.

We waited at Flight Service approximately 45 minutes to an hour before one man with a camera showed up and stated that he was from U.S. Customs, but showed me no identifications. When I tried to talk to him he was very sarcastic and told me that other pilots had made it and why didn't I. I tried to explain to him, but he said he was not a pilot and was not interested and he was only there to take pictures. So we waited another 15 or so minutes and 2 uniformed U.S. Customs officers came in, one being Lt. E.R. Lara SCI/USC #2365. I never did get the name of the other officer. However, he was always very nice.

Lt. E.R. Lara asked who the pilot was and I told him I was. The first thing he said to me was that he was going to seize my plane. I tried to explain the circumstances to him. He stated that he did not care and that I should not have done what I did. However, at this point, he did make a phone call to someone. He then came back and told me to come into a room just him and myself. He was very sarcastic he told me he was citing me on failure to obtain landing rights PART 19 CFR 6.2 (a). He also stated he was not going to seize my plane this time. However, if I did anything again they would seize my plane and sell it. And they did not care what my excuse was. And he did not care anything about the winds or anything else about flying. And he did not even want to hear about it. In my opinion this officer is a disgrace to the uniform he wears. I could not believe I had landed in the United States I thought I had landed in Russia.

I signed the Notice of Violation which I had no other alternative. Which states in Lt. E.R. Laras writing that a penalty may be issued at a later date. We then walked out of the room I asked Lt. Lara to talk to the flight service specialist he stated he did not care what the conditions of the field were. And we had no right to land anywhere but Calixco. And I was a bad pilot because other pilots had made it.

My wife asked him then what should we have done. And he stated we should have called U.S. Customs. I then asked him do you have air to ground communications and his answer was no. So I stated I called San Diego Flight Service to call U.S. Customs didn't they do that. He stated yes but, I was still in violation. And he did not care about the safety of my passengers. My wife and passengers could not believe what they heard. And also could not believe that we where in the United States and that a represenative of our government could talk like this and be representing the United States of America.

In my opinion this type of gestapo harassment and intimindation by U.S. Custom officers is putting pilots into situations that are beyond the design limitations of their aircraft. You are just asking for an accident to happen. We have had enough airplane accidents.

Bert W. McCormack

Bert W. McCormack

BWMc/sr

Shelley/
Gail

POLICY
MAR 2? '88

**Bartow Municipal Airport
and Industrial Park**

March 16, 1988

A.O.P.A.
Attention: Ms. Gail Lewis
421 Aviation Way
Fredrick, Maryland 21701

Dear Ms. Lewis:

Enclosed is a copy of a letter which I have forwarded to Mr. Charles Canady, who is Administrative Assistant to Senator Lawton Chiles.

Very truly yours,

BARTOW MUNICIPAL AIRPORT DEVELOPMENT AUTHORITY

B. L. Durrance, Jr.
Executive Director

BLDjr/clb
CUSTOMS.88

P. O. Box 650, Bartow, Florida 33830-0650 Telephone: Area Code 813/533-1195

March 3, 1988
Late Afternoon
Bartow, Florida

I received a telephone call at home from Mr. Greg Drummond, General Manager at the Bartow Flying Service and also a Tower Controller at the Bartow Municipal Airport, in regards to piloting a flight for Hi-Way, Inc., a local corporation, to Miami and returning to Bartow that evening. I asked Mr. Drummond if he would also be going along so as to finish my requalification in this aircraft since I haven't flown it for quite some time. He told me that was exactly what he had in mind.

Upon my arrival at the Bartow Airport, Mr. Drummond prepared and checked the aircraft while I contacted the St. Petersburg Flight Service Station for weather information and the filing of instrument flight plans for both legs of the trip. Our proposed departure time was 5:30 p.m. Eastern Standard Time.

Our passengers, Mr. Jeff Booth of Hi-Way, Inc. and their client, arrived at 5:50 p.m. We loaded up and proceeded to get underway. The route for our flight plan from Bartow to Miami was: Bartow direct Lakeland VOR, Airway V-157, LaBelle VOR, Airway V-529, Swags intersection, Airway V-7, Peate Intersection, direct Miami International.

During our descent into Miami, our passenger, the Hi-Way client, decided it would be more beneficial for him to land in Fort Lauderdale than in Miami. At that point, we diverted for a landing in Fort Lauderdale. Upon landing in Fort Lauderdale, we taxied to Business Air Center, a Fixed Base Operation, on the north side of the airport. We deplaned and proceeded inside the operations building.

Mr. Booth and his client took care of their business and Mr. Drummond and I filed a new instrument flight plan back to Bartow since our original one had us departing from Miami. The original flight plan was filed as follows: Miami 5 departure direct Miami VOR, Airway V-97, LaBelle VOR, Airway V-157, Lakeland VOR direct Bartow. The new flight plan was filed - Fort Lauderdale radar vectors, LaBelle VOR direct Bartow. The time was approximately 7:15 p.m. and this new flight plan was filed with the Miami Flight Service Center for a 7:30 p.m. departure.

When Mr. Booth completed his business, he got together with Mr. Drummond and I and proceeded back out to the aircraft.

After receiving our instrument clearance, we taxied out and departed for Bartow. Approximately 40 miles southeast of LaBelle VOR, Mr. Drummond requested a direct routing to Bartow from Miami Center. When this was approved, we did just that. About the time we passed by Avon Park, Florida, we began our descent into Bartow and descending out of 4000 feet, we canceled our radar coverage and instrument flight plan since we had the airport in

Continued - Page Two

view and since the tower was closed. This is a normal procedure so that the pilot can call in on the tower frequency and listen for other traffic. The Air Traffic Controller stated "no traffic observed above 2000 feet, but that doesn't mean there isn't any" and acknowledged our cancellation.

Mr. Drummond tuned in the proper communication frequencies and announced our intentions after we listened to automatic weather frequency for Orlando International for the wind direction. I originally planned to fly overhead the airport and enter a left hand traffic pattern for Runway 9L. As we neared the airport, about 3 miles out, I decided to proceed to a point 2 miles northeast of the airport and fly directly over my home to let my wife know I was home. From there I was at traffic pattern altitude and flew directly west so as to enter a downwind leg. I also turned on my landing lights at this time. (For the duration of the flight I had navigation/position, anti-collision and strobe lights turned on). At about the half way point on the downwind, I noticed a green navigation light (right wing) off to my left between myself and the runway. I pointed this out to Mr. Drummond and he also saw it. We checked our radios because we had not heard anyone else announce being in the area. The aircraft turned a base leg towards the airport so I elected to continue my approach. Then suddenly a landing light came on from an aircraft approaching from the southeast and very close in. Still no radio announcements. These aircraft seemed to be converging while I elected to continue my downwind leg. Suddenly the first aircraft turned on bright spot lights. At this point, I suspected it to be a helicopter while the other aircraft seemed to be an airplane. I turned my base leg about 3 miles from the airport and observed the helicopter searching about the airport and the airplane landed. During this time, Mr. Drummond continued to announce our intentions for landing. I then turned final approach at 3 miles out. At this time, the helicopter and airplane converged on the far end of the runway and Mr. Drummond stated that he thought it might be the police or D.E.A. on a bust. The airplane slowed and appeared to be taxiing clear so I selected landing flaps to land. Unexpectedly and quite suddenly the airplane turned around on the runway while I was at about 100 feet above the ground. I continued down to about 50 feet when the airplane and helicopter started heading my direction, I leveled the nose and added a little power to attempt to figure out just what was happening. I decided that instead of fighting over the runway with these people who had a total disregard for FAA procedures as well as anyone elses safety, I would simply execute a go-around and re-enter the pattern and wait for them to leave. During the go-around, I spaced the aircraft to the right of the runway so that I could get a better view of these aircraft. The airplane proceeded to taxi back down the runway in the opposite direction of traffic without any radio announcements. The helicopter turned off its bright spot lights and proceeded to fall in behind us in the departure path, also with no radio calls. As I climbed out and turned left, the helicopter moved in closer and slightly below and to the right of our aircraft. As I put the gear down and Mr. Drummond made his radio announcements, the airplane on the runway lifted off again with no radio calls. I turned base leg again and the helicopter moved in closer. Then as I turned final approach, I noticed the airplane had turned downwind and was heading towards us at a low altitude. The helicopter had moved in even closer to our airplane. My primary attention was focused on the safe operation of my aircraft and the safety of my passengers, but while still in the air when the helicopter moved inside of 100 feet of my airplane, I became very concerned about its aggressive and dangerous operation in the vicinity of other aircraft, namely mine.

At this time, I decided that instead of being subjected to further assault in the air, that the best thing to do was to land instead of being forced to crash and possibly kill someone or injure someone. As I taxied down the runway and turned on to the lighted ramp area, the helicopter moved to within 25 feet of our airplane. It had now turned on the spot lights so I could not even see the aircraft as to be able to identify it. Then it moved directly overhead less than 50 feet above us while we continued to taxi into a crowded well lit ramp area where tens of aircraft are parked in close proximity. The down blast from the rotor wash was tremendous. I held on to the controls of my aircraft with all my strength and it was useless. The controls flew around as though I was not even there. The plane shuttered and shook so violently that I just shut off the engines and stomped on the brakes. I have flown helicopters and am familiar with the dangers associated with rotor wash and I was fearful that the aircraft was going to flip over and possibly again subject someone to injury.

As the propellers spun down I saw 6 to 8 men brandishing automatic weapons, shotguns and pistols begin to surround my plane. They were shouting to get our hands up over our heads. Then they started to shout for us to "get out." During all this I was scared stiff and was very concerned that if I put down my hands to undo my seat belt, that I might possibly be subject to an unprovoked attack once again, but this time by a trigger-happy machine gun toting, inexperienced, nervous kid. Mr. Drummond, seated next to the door, was out immediately. I very slowly put my open right hand down, undid the seat belt and then raised my open right hand back above my head and slowly climbed out of the airplane. As I proceeded down the steps of the plane looking at Mr. Drummond in dress clothes laying face down on the tarmac with an M-16 pointed at the back of his head mere inches away. I also had the pleasure of facing a variety of firearms pointed towards my face as I attempted to descend down the small narrow steps of the plane without using the hand holds. Looking back on this, one small slip could have been disaster.

At this point, I was forced to lay face down on the ground and was subjected to a search then handcuffed. I kept my head up and saw the airplane from earlier taxi up and shut down while several other armed men disembarked and came running up, including one in a blue uniform. I also witnessed Mr. Drummond and Mr. Booth being subjected to the same search and handcuffing that I was. Two men conferred with the man in uniform and then climbed aboard my plane and searched the inside leaving it quite a mess. The gentlemen who had searched me showed me that he was putting my personal belongings in his pocket and said he would return them when this was over.

As of us, we were told to roll over and stand, which is no easy task with your hands cuffed behind your back. We were all separated by at least 30 feet from each other and then the questioning began.

I thoroughly enjoyed the fact that I was being considered and treated as though I was guilty of something and yet no one had identified themselves to any of us. It was quite evident by this time that we were being considered as drug smugglers or something along that line.

I explained to the gentleman with me that I was the pilot and I was quite concerned with the unprovoked attack. He asked where we came from, who we were and what we were up to. I explained to him all of this and he wanted to know why we were flying with our lights off. I told him that our lights were on and had been since Fort Lauderdale and all the way up the center of the state. He acted quite surprised and said they had followed us up the west coast. I told him wrong airplane; we did not fly that route. He asked if I could prove this and I told him "yes." Miami Center would have that information as well as Fort Lauderdale tower. He then asked why I landed and took back off again at Bartow. I told him about the go-around and that we had never landed on the first pass. I asked him if they had a hot tip and told him they had the wrong plane. He asked who Mr. Drummond and Mr. Booth were and I explained that.

About this time, another gentleman came over and talked with the man guarding me then went back over near our plane. There he conferred with two other men including the one in uniform. Mr. Drummond was then released from his handcuffs and escorted to the operations building where he unlocked the door and went inside with several men. Mr. Booth was also uncuffed and brought over near me, then I was released. I then obtained permission to shut off the battery. We were escorted over to the building and told we could not go inside along with Mr. Drummond. Please note that only the man who retained me treated me with any civility. Everyone else treated all of us like dirt. They were rude, forceful and belittling even after we proved that we were innocent of any wrong doing. In talking later with Mr. Drummond, I found out that the only reason they released him was so that he could make the calls necessary to prove our innocence.

A short time later another gentleman came to Mr. Booth and myself and finally requested some identification some 30 minutes after this nightmare began. We produced our Driver's License as another gentleman asked for my Pilot's License and personal information.

I then over heard a couple of the agents discussing how they had to remove their infrared goggles because of all of the lights which were turned on, on my plane.. They mentioned how the lights flooded their goggles with hot spots. Moments later the gentleman with our Driver's License came back outside and returned them saying they had made a mistake and also that I should get the lights checked on my plane since they don't seem to work. I then told him that I had all my lights on all the way from Fort Lauderdale and then the landing lights on when I got near the airport. He questioned me about our route up the west coast. I explained to him that we flew right up the center of the state.

I went inside the building and called my wife and explained to her why I had been delayed. The agents then scoured the airport grounds and made some phone calls. As Mr. Drummond announced that we were leaving and locking up, he was told that that was not possible because they were waiting for phone calls and since we were already detained this long, a little longer would not make any difference.

After 1 1/2 hours of this abuse and upon the arrival of the local authorities, we were finally permitted to leave.

I am deeply concerned that if this reckless and dangerous practice is allowed that many innocent people are going to be physically and/or emotionally harmed. How can these agents be allowed to run rampant and attack anyone they choose, not only in the air, but also with the mental and physical abuse they exhibited to us on the ground? It seems to me that too many of these people have been watching too much TV. Why couldn't a simple ramp check with phone calls for verification suffice? Three men in dress clothes in a private aircraft full of seats and properly lighted, following FAA regulations and procedures, exercising sound judgment in the interest of safety, landing on a lighted runway and taxiing on to a well lit ramp, with no baggage, must now be listed as a profile for drug smugglers for customs agents to execute such a forceful attack upon us.

Continued - Page Six

I am now concerned that as I look back on these events that my life was in jeopardy during the entire sequence of events up to the point that I am fearful what might take place if it should happen again. If abusing innocent citizens is U.S. Custom's way of handling drug trafficking enforcement, then something must be changed before innocent people die.

Daniel E. Petrovich
Pilot
Bartow Flying Service/Hi-Way, Inc.
Cessna 310 - N87456
March 7, 1988
Bartow, Florida

Chain of Events

On March 3, 1988, my day started at 5:30 a.m. by working a 10 hour shift, 7:00 a.m. - 5:00 p.m., in the Bartow Control Tower. At 4:30 p.m. Mr. Steve Coleman of Hi-Way, Inc. called me and asked if I would fly his client to Miami at 5:30 p.m. I agreed.

After thinking about it for a few minutes, feeling fatigued, I called Dan Petrovich and asked him if he would fly N87456 to Miami to drop off a client for Hi-Way, Inc., but I would go along because it would be a good time for Dan to get a cross country night re-currency check in N87456. Both of us are contract pilots.

I closed the Control Tower at 5:00 p.m. and went down to pre-flight N87456 while Dan filed IFR flight plans to Miami and back to Bartow. Hi-Way, Inc., aircraft N87456, C-310, is solely used for the purpose of dropping off and/or picking up American and/or foreign, past, present, and future clients for Hi-Way, Inc., at major airports throughout the state of Florida.

Dan filed IFR for a 5:30 p.m. - 2230Z takeoff. On board the aircraft was Dan, myself, Jeff Booth an employee of Hi-Way, Inc. as escort for the client, and the client.

We took off from Bartow actual time 5:55 p.m. - 2255Z, IFR to Miami. While enroute, we found out that the client was going to rent a car at Miami and drive to Fort Lauderdale. At that point, Dan and I suggested to just land at Fort Lauderdale International instead and save the drive from Miami - all was agreed. About 40 nautical miles northwest of Miami we diverted to Fort Lauderdale; had to shoot the ILS due to weather and landed at 7:05 p.m. - 0005Z.

Jeff Booth, representative for Hi-Way, Inc., got the client his rental car and Dan was filing an IFR flight plan from Fort Lauderdale to Bartow - takeoff for 7:30 p.m. - 0030Z. Actual time of departure was 7:40 p.m. - 0040Z.

When we got within 20 nautical miles south of Bartow, the weather was good VFR, we saw the airport, and I canceled IFR with Miami Center and we proceeded VFR to the airport.

When we approached within 10 nautical miles south of Bartow, I started to announce our position and intentions to land on frequency 121.2, which is proper procedures. No other aircraft responded on 121.2, which by FAA rules, are suppose to if operating within an airport traffic area.

With no other aircraft radio response, we proceeded to enter the pattern for Runway 9 at Bartow, announcing our presence and intentions to land on Runway 9 at Bartow the entire time on frequency 121.2. Our aircraft had all proper lights on the entire time - navigation, strobes, beacon, etc. Dan, Jeff, and myself noticed what appeared to be a helicopter operating low level on the east end of the airport and the active runway at Bartow. I tried to raise the helicopter on frequency 121.2 to find out his intentions so we would not conflict with each other while we landed - no response from the helicopter. We then noticed search lights from the helicopter while we were on the downwind for landing. As we were about to turn left base, Dan and I noticed an aircraft approaching from the southwest and that aircraft cut in front of us on a right base and landed in front of us on Runway 9.

By this time, 8:30 p.m. - 0130Z, Dan and I got concerned about our approach to land because we had two other aircraft on the runway area that was not on frequency 121.2 and we had no idea of their intentions.

As we turned left base to final after having to space ourselves properly from the aircraft who cut us off on a right base and landed in front of us, that aircraft was still on the runway. Dan and I were saying the aircraft that already landed would clear the runway on the east end. At this time, Jeff was real concerned not having much flying experience and seeing Dan and myself real concerned at this point.

As we were in the landing flair, never touching down, and all lights operating on our aircraft, Dan, Jeff, and myself noticed that the aircraft that landed in front of us not only did not clear the runway, but in fact, turned around on the runway and started to roll straight at us. With the helicopter operating low level on the east end also.

At this point, Dan made the decision to go around which was the proper thing to do. Second choice was to land and crash into the aircraft coming at us on the runway. This aircraft we later found out was a U.S. Customs aircraft. I told Dan to do nothing but fly the airplane and I would do the watching and radios. We were trying to get to pattern altitude for our second attempt to land when I noticed the helicopter in a hot chase after our aircraft - dangerously close. I told Dan to land if at all possible because we were all terrified at this point, with the possibility of crashing.

Upon landing, I told Dan to taxi to the FBO where there was plenty of lights that I hoped would be helpful. For approximately 300-400 feet while we were trying to taxi to the FBO after clearing the runway, the helicopter was within 50' ft. of us and slightly above causing severe turbulent rotor wash the entire time.

Continued - Page Three

At this point, I saw it was a Black Hawk helicopter, U.S. Customs, and told Dan to shut down immediately before they flipped us upside down or started firing at us. The rotor wash was still so severe, violently banging our aircraft and us, I could not open our aircraft door.

The helicopter finally slowed the rotor enough to where I could open the door under massive bright lights from the helicopter and saw our aircraft surrounded by a dozen U.S. Customs agents, all with automatic weapons pointed directly at us, screaming and shouting to get out of our aircraft.

We totally cooperated by getting out, hands on our head, etc. I was placed face down on the ramp, stripped of my possessions, and handcuffed, hands behind my back and a foot placed on my back by an agent. The whole time I was surrounded by agents with M-16's, etc., pointed at me. I was trying to identify myself, but the agents did not want to hear anything. They were positive we were smuggling drugs. I said, "Let me call the Airport Manager and clear this up immediately." An agent said he did not want to talk to any Airport Manager.

After the agents searched our aircraft and found nothing, my handcuffs were removed and I was then instructed to show my identification. I showed the agent my ID and he asked me to prove that we were on flight plans and he didn't care who I called to prove it. We went into the FBO office and I placed a call to St. Petersburg Flight Service Station, Watch Supervisor, and gave the phone to an agent.

At this time, 2 or 3 agents were on the phone cross-checking my information on IFR flight plans we were on, and in a few minutes, our aircraft and us were checked and verified legal.

I immediately said I had a long day and a terrifying evening to the agents and I would like to lock up the office and go home, but now the agents wanted to look for the real drug smugglers on the airport, who if they were, was long gone by now. The agents told me I've been here so long now, a little longer wouldn't hurt me. I was finally able to lock up the office and head for home at 10:00 p.m.

I found the agents to be young, overly aggressive and extremely pumped up, all fine qualities to be a U.S. Customs agent, but totally terrifying to an innocent person on the receiving end of M-16's, 9mm's, etc., during a drug bust.

I don't question the ability of Customs agents to do their job, but I definitely question their judgment in the execution of their job. I felt my life was in jeopardy the entire time until my handcuffs were removed. We could have crashed from the begin ning and/or shot and killed, all by mistake with everyone's adrenalin peaked.

The Customs agents did not and could not **POSITIVELY** identify our aircraft as the aircraft in question and there should have been a ramp check only. That would have cleared us in 5 minutes or less with one phone call instead of having to be subjected to an all out S.W.A.T. attack, putting our 3 lives and long time business reputations in total jeopardy.

I had Aircraft Engineering inspect N87456 on March 4, 1988, especially all control surfaces, and only found the magnetic compass located on top of the panel to be broken off its mount due to severe rotor wash. A Customs agent suggested I do the same thing before flying the aircraft.

I have been a pilot for 18 years and since this terrifying experience I was subjected to on March 3, 1988, I have not and will not be pilot-in-command of another aircraft, business or pleasure, until this nightmare of mental abuse is totally erased from my mind. What if the new proposal to shoot first and ask questions later was in effect. All three of us would be dead today, no doubt in my mind.

Greg Drummond

Greg Drummond
General Manager
Bartow Flying Service
March 3, 1988

Hello: My name is Jeff Booth. I am Director of Purchasing and Parts Sales for Hi-Way, Inc. in Bartow, Florida. Today's date is March 4, 1988, 8:35 a.m.

Following are the series of events that took place on the evening of March 3, 1988, as I recall them.

At approximately 5:45 p.m. in the afternoon, myself and Mr. Joe Taylor, who is with Versair Flight Kitchen in Kingston, Jamaica, arrived at Bartow Municipal Airport. We were scheduled for a flight to Miami International Airport at that time and boarded the plane. Our pilots for the flight were Dan Petrovich and Greg Drummond.

At approximately 5:55 p.m. we took off from Bartow Municipal Airport headed for Miami. The radio controls were on audio so that everyone in the plane could hear the conversation between the pilot and the control tower. Mr. Petrovich was flying the plane and Greg Drummond was doing the radio work. We took coordinates from the tower and headed for Miami International Airport. About midway through the flight, or possibly a little more than midway through the flight, our customer requested it we could take him directly into Fort Lauderdale seeing as how he was going to drive from Miami International Airport to Fort Lauderdale. We then changed flight plans from Miami to Fort Lauderdale, and these were filed with the control tower. We were given new coordinates and headed to Fort Lauderdale.

We landed in Fort Lauderdale at approximately 7:05 to 7:10 p.m. Mr. Taylor, myself, and the two pilots got out of the plane and went to the airport lounge and office. After confirming that Mr. Taylor indeed had transportation from the airport, we were ready for the trip back to Bartow. Dan approached the counter in the airport lounge and spoke with the people and filed what I believe to be the flight plan back to Bartow.

We then boarded the plane at approximately 7:20 p.m. and taxied to the runway for takeoff. We were instructed by the control tower to take off and were given coordinates. We flew out over the ocean approximately two to three miles and then turned back toward land. All coordinates were being given by the control tower in Fort Lauderdale. Everything was being played on audio; everyone on the plane could hear what was going on. We flew as instructed back to Bartow Municipal Airport. About four to five miles out from Bartow Airport, we noticed what looked to be one, possibly two, aircraft flying very close in the vicinity of the airport. We approached the runway to make the landing, and as we were coming in, it looked to be two sets of lights at the end of the runway. This would have been the east end of the runway, I would believe. As we came in, these lights were not moving; they were stationary.

We came within, I would say, 40 to 50 feet off the ground, and Dan pulled back on the controls and pulled back up because were scared we would hit whatever was at the end of the runway. As we did so, I would say we narrowly missed the trees at the end of the runway because of having to pull back up. I then looked back as we flew over the two planes that were at the end of the runway, and one appeared to take off straight up, so it would have been a helicopter. I, not being a pilot, am not really familiar with the way things, you know, look on the ground, especially at night, but I did look back, and I saw this vehicle take off straight up, and at that time I did know that it was a helicopter. The helicopter flew up under us. I don't recall the distance exactly, but I could see it, and then it went to the right side of us out of sight. I don't know whether they turned off their lights or they just went out of sight from where I was sitting. There was no radio contact between that aircraft and our aircraft as I recall. We then came back around to the side of the air strip to make another approach. As we came in, the helicopter came back into sight, and I would say that as we were making the landing he was approximately 15 to 25 feet above our aircraft and the turbulence being created by the chopper was shaking the plane in such a manner that I thought we were going to crash. However, we did land, and when we hit the ground the helicopter got even closer. The turbulence, as I say again, was such that the aircraft was being shaken all around. After we in fact landed, I asked Dan and Greg what was going on, and they both had no earthly idea, nor did I, why this aircraft was following us so closely and why it was flying right over the top of us. Dan told me that he was not stopping out in the dark area of the runway, that he was going to pull up to the airport authority office, where they was plenty of lighting, and as we tried to pull up there, this helicopter made a maneuver in such a way as to cut us off to keep us from going up there. However, Dan flew around him -- I say flew around him -- he taxied around him, and we pulled up directly in front of the airport authority building. The instance we stopped, the helicopter hit the ground approximately 35 to 45 feet away from us, and about 12 people jumped out with M-16 rifles, shotguns, pistols, bullet-proof vests, riot masks -- basically a SWAT team, if you will. They immediately ran toward our aircraft with all their weapons aimed directly into our aircraft and started shouting for us to get out of the damned plane. Greg was furious, Dan was furious, and myself, and we were quite scared as all these weapons were being aimed directly at us. The people on the ground were yelling at us to put our hands on our heads and get out of the aircraft. Greg Drummond was the first one out of the aircraft, Dan and myself being left in.

We had our seat belts attached and we were scared to reach down and open the seat belts because we were scared they would think we were reaching for a gun, and it was really quite a terrifying experience. I yelled out the plane and let the people know that I was slowly going to undo my seat belt and get out of the aircraft. All the time they were shouting at me to get out of the damned plane. As I stepped out of the plane, two to three people approached me right away with weapons aimed directly at me. I asked them what was going on, and one of them grabbed me by the arm and told me that I was going to lie down on the ground and keep quiet, and I was asking what was going on, why were we being dedained, why would I have to lie down on the ground when I had not done anything, and they told me to keep my damned mouth shut and do as I was told. I then laid down on the ground with three people standing directly over me, and I was trying to look around and they told me to keep my face down. I looked over to the right, which would have been to the south of me, and I saw that three to four people had Mr. Drummond on the ground, one with a foot in his back and another with a M-16 rifle, or some type of rifle, aimed directly at Mr. Drummond's head. It looked as though they were interrogating him and at that time they put handcuffs on Mr. Drummond, they put handcuffs on myself and handcuffs on Mr. Petrovich, who was over to the north of myself. It looked as though there were three separate interrogations going on while we were lying down on the ground. I asked what all the treatment was going on for, what we had done, and no one would say anything other than to be quiet and to lie on the damned ground. After approximately three to four minutes of myself lying on the ground, I was then searched, I would assume for weapons or drug paraphernalia, or whatever they were looking for, and I was told to remain lying on the ground until instructed to get up. After approximately 20 to 25 minutes lying on the ground they told us to get up. They took myself and Dan Petrovich to the airport authority entrance. There were a couple of benches sitting outside and they told us to sit down there. Mr. Drummond was taken inside the airport authority office and I do not know what was going on with Mr. Drummond at that time. Again, back outside of the building, Dan and myself were asked to produce identification and asked details of what had transpired during the evening. They instructed Dan that we had not filed a flight plan with any of the airport authority towers and that we had come in from out of the country without a flight plan and without checking with Customs. Mr. Petrovich then told them that we had indeed filed a flight plan with Bartow when we had taken off and Fort Lauderdale when we had left there and that we had flown over the ocean approximately two to three miles as instructed by the Fort Lauderdale tower. However, the people that were inquiring disagreed with that. They told us that we had been picked up on their radar from Miami as coming in from out of the country without either a flight plan or checking with Customs. Dan at that time told them that if they would simply call the Fort Lauderdale tower and ask them, that this could be confirmed. They also had said that we did have our running lights on as we were approaching the air strip, which is certainly false, because I looked out the window and I believe that Dan had the strobe lights and the running lights on most of the trip. I certainly know they were on as we were landing because I could see them myself. Dan then asked the people why they made no attempt to contact us on the radio because we were trying to do so with them. They told us that we did not have our radio in operation. After approximately 15 to 20 minutes of interrogation outside the building, someone came from inside and instructed the people that were questioning us to let us go as our flight plans had been confirmed with Fort Lauderdale International Airport. They then made a very unsympathetic apology for detaining us.

In closing, I would like to say that I am outraged because I feel that our safety was not in mind during what was happening. When the helicopter came in hovering over us we are damned lucky we did not crash, and thank goodness for the skills that Dan Petrovich and Greg Drummond have because I feel that is probably the only thing that saved us. I feel like we were treated as common criminals before, you know, anything was derived. If the people in the helicopter would just have tried to contact us on the radio and asked us to land and then questioned us, you know, I don't have a problem with that, but forcing us down, almost causing us to crash, pointing the guns at us, making us lie down on the ground, handcuffing us, treating us as common criminals, I think was a terrible injustice. I am certainly outraged by this and I just hope that no one that I know ever has to go through such an incident because it was very horrifying to have all these weapons aimed at you not knowing if someone was going to shoot you or not. I am sure any human being in that situation would certainly feel the way I do. I understand now that there is a law before Congress that would enable these people to shoot first and then ask questions later. If so, what would have happened this evening during this incident? Here you had three innocent people that had done nothing wrong and, you know, we would have been blown out of the sky, and I just don't feel like this law is appropriate. Again, I say I was outraged by the way we were treated, the way we were handled, and I hope that some action results of this.

Jeffrey R. Booth
Jeffrey R. Booth
Hi-Way, Inc.

Sworn and subscribed before this 11th day of March, 1988.
Carol J. Knowles My Commission Expires: 6-22-90
Notary Public

Bartow Municipal Airport and Industrial Park

March 16, 1988

Mr. Charles Canady
Administrative Assistant to
Senator Lawton Chiles
The Federal Building
Lakeland, Florida 33801

Dear Mr. Canady;

I would like to express my sincere appreciation and thanks for your prompt response concerning the actions of the Customs Department on an aircraft at the Bartow Municipal Airport on March 3, 1988.

Mr. Joe Baker of your office also deserves a lot of credit because he immediately called and followed up on this matter. I spoke with Mr. Russell Schuldt at the Customs Air Division at Homestead Air Force Base - 305/536-4610. Mr. Schuldt was apologetic, but after Mr. Baker called, I received a call from Mr. Robert Garland at the same phone number I mentioned above and he gave me an additional number of 305/536-4606. Mr. Garland was very apologetic, yet he advised me that the scenario as it went down, was standard procedure. He also called Mr. Warren Leonard, President of Hi-Way, Inc., Post Office Box 1956, Bartow, Florida 33830, 813/533-1118 and the owner of the airplane and apologized and had the legal people call in reference to claims for damages to the aircraft.

I am enclosing an article that I received that was published in the Lakeland Ledger on March 1, 1988, about a gentlemen in Miami who was a victim.

Some serious things that I would like to point out to you are:

1. I am unalterably opposed to drugs and have assisted county and local law enforcement people and will continue to do so, but I am horrid by the tactics used by these people and the danger imposed to property and lives.

P. O. Box 650, Bartow, Florida 33830-0650 Telephone: Area Code 813/533-1195

Mr. Charles Canady
Page Two
March 16, 1988

You will note from the statements of the two pilots and the passenger in the airplane, that no regard was given to these people whatsoever. The Customs agents did not identify themselves and their language and actions sound like gestapo tactics.

I do appreciate Senator Chiles efforts and I applaud him in his fight against drugs and I am sure the Customs people and other agencies deserve a lot of credit against this menace, but I maintain that we should not endanger lives or property in our pursuit against drugs. It is only an act of God that these people were spared their lives.

Let me again thank you for your efforts and I hope that all of the agencies that are in the pursuit of drug dealers will calm themselves and let's not jeopardize innocent people and/or property in the pursuit of their jobs.

I urge you to read the statements of the three people enclosed.

Very truly yours,

BARTOW MUNICIPAL AIRPORT DEVELOPMENT AUTHORITY

B. L. Durrance, Jr.
Executive Director

BLDjr/clb
CUSTOMS.88

Enclosures

CC: Mr. Warren C. Leonard, President - Hi-Way, Inc.

8B THE LEDGER/Tuesday, March 1, 1988

Joyride turns sour when agents mistake pilot for drug smuggler

By Richard Cole
The Associated Press

Gustavo Viera stands with his new plane. AP photo

MIAMI — An unsuspecting pilot out for a joyride wound up with his face in the dirt, M-16s pointed at his head and his ruined plane upside down on the runway after drug agents mistook him for a cocaine smuggler.

Gustavo Viera, a Miami accountant, has received an apology from Vice President George Bush's anti-drug task force, the Drug Enforcement Admimistration and the U.S. Customs Service.

But he received no compensation and little satisfaction, and said Monday he plans to file a claim against the government in the next week.

Viera said he never saw or heard the Customs helicopter that followed him to the airport, and worries what would happen if a controversial Customs proposal to shoot down suspected traffickers is adopted.

"Had that been in effect, I wouldn't be here talking to you today," said Viera. "When you're in one of these airplanes and the engine is loud and they shoot a warning, you're not going to hear it."

He called Customs' shoot-down proposal "a real stupidity."

The incident with Viera occurred July 9 when he took his Piper Cherokee — bought only three weeks before — out for a ride over Biscayne Bay. He then headed for a small airport south of Miami where he also kept a glider.

A subsequent letter from William Rosenblatt, an assistant commissioner in the Customs enforcement office, explained what happened next.

Rosenblatt said Customs radar had lost a suspected trafficker being tracked in flight, then picked up Viera's plane.

"It was incorrectly assumed that your aircraft was in fact the suspect," said the Customs letter.

According to friends of Viera who witnessed the climax of the chase, a Customs Blackhawk helicopter followed Viera's plane as it touched down at the Kendall Glider Port, but stayed behind him. Viera said that in his four-seater it was impossible to see or hear the helicopter.

"When (Viera) was turning left to get out of the runway, presumably the pilot of the helicopter thought Gus was trying to run away," said Rene Betancourt. "He made a maneuver with a blast of the prop, and turned Gus's plane upside down."

The still oblivious Viera's first thought as he sat cut and bruised in his smashed plane was that his nose gear had collapsed.

"I'm upside down on my runway, fuel was pouring out and the thing was about to blow," said Viera.

"I thought they were going to rescue me," he said. Instead, as he pleaded with them to pull him out of the plane, someone smashed in his window and hit him in the back of the head.

Student shot, killed while driving to party

The Associated Press

HALLANDALE — Police Monday were looking for suspects who apparently fired a shot from a van on Interstate 95, killing a law student driving to a party after taking the Florida Bar exam.

"Right now, we're just hoping someone will come forward who saw what happened. Somebody had to. There was a lot of traffic out there," said Broward County Sheriff's spokesman Jim Leljedal.

Irv Ribler, 26, was shot just below his left shoulder after dusk Saturday. His car sped across the median, DT/SJB

MID-COAST AIR CHARTER*

SJB plz handle

REC'D AOPA
NOV 25 1987
GOVT-TECH

November 13, 1987

Mr. Robert T. Warner
Senior Vice-President, Government and Public Affairs
Aircraft Owners and Pilots Association
421 Aviation Way
Frederick, MD 21701

Dear Mr. Warner,

Please find enclosed a copy of our formal protest letter recently submitted to U.S. Customs.

Needless to say, we were shocked at receiving such mistreatment from our Customs and hope that this is an isolated incident. We would be very interested to know if other members are having problems with this.

Thank you for your interest.

Sincerely,
MID-COAST AIR CHARTER

Jack Chapman AOPA 490764C

JC/mec
Enclosure

of 716-644-1745

HOBBY AIRPORT • 7770 AIRPORT BLVD. • HOUSTON, TX 77061 • 713/644-8470
* MID-COAST CABLE TELEVISION, INC. d/b/a MID-COAST AIR CHARTER

MID-COAST AIR CHARTER*

November 6, 1987

Ms. Patricia McCauley, District Director
U.S. Customs Service
P.O. Box 52790
Houston, Texas 77052

Dear Ms. McCauley:

The purpose of this letter is to formally protest the handling of aircraft N4WD, a Mitsubishi MU-2F, by the United States Customs Service upon arrival and reporting for Customs clearance on October 21, 1987 at approximately 5:15p.m. U.S. Customs' negligence in handling this flight resulted in deliberate delays and actions which were clearly detrimental to the health of Mr. James Dunn, a heart patient being transferred between hospitals in Panama City, Panama and Bellville, Texas via Cozumel, Mexico, Houston, Texas and Brenham, Texas.

Mr. Dunn, a Bellville, Texas resident, suffered a heart attack aboard ship during passage through the Panama Canal and was hospitalized at the Patilla Balboa General Hospital in Panama City, Panama. His family contacted John Richardson for assistance in returning Mr. Dunn to the United States for treatment. Doctors recommended that Mr. Dunn be transferred by private airplane only. Mr. Richardson initially contacted the U.S. Customs office at Houston Hobby Airport on October 18, 1987 regarding the possibility of an overflight directly to Brenham and he was advised that this would be impossible. He again contacted U.S. Customs at Hobby Airport on Monday morning, October 19, 1987 offering to provide any pertinent information which might be useful to Customs in expediting the handling of the planned flight for the purpose of minimizing any discomfort, delays, or other threat to Mr. Dunn's condition. The Inspector replied that no advance information or preparation would be necessary.

Flight planning and the required Central American overflight and landing permits were obtained through Universal Weather and Aviation, Inc. in Houston. Mr. Dunn's condition and a planned general strike and political demonstration in Panama dictated a return to the U.S. on October 21, 1987. Last minute scheduling changes prevented Mid-Coast from assigning a second pilot, so Mr. Richardson commanded the aircraft as its single pilot on the extremely demanding and strenuous two-day trip accompanied by Mr. David Burleson, a family friend, and Ms. Lauren C. Pelafigue, R.N. and Head Nurse of Bellville General Hospital.

HOBBY AIRPORT • 8922 RANDOLPH • HOUSTON, TX 77061 • 713/644-8470
*MID-COAST CABLE TELEVISION, INC. d/b/a MID-COAST AIR CHARTER

Panamanian and Mexican officials and agents and Air Traffic Controllers of all countries involved handled the return emergency Life-Guard flight in a most efficient and expeditious manner. Mr. Richardson telephoned his secretary, Mrs. Sue Howren, from Panama prior to his departure and Customs Inspector Molmer was notified by Mrs. Howren at 10:05a.m. of N4WD's estimated 4:30p.m. arrival at Hobby airport. Mrs. Howren again explained the emergency nature of the flight and offered to provide any additional information needed to assist in expediting the flight. Mr. Richardson contacted Mid-Coast operations by radio at approximately 4:45p.m. providing an arrival estimate of 5:15p.m. Our office contacted Hobby Customs by telephone with the arrival information and Mr. Jack Chapman, Director of Operations for Mid-Coast, arrived at the U.S. Customs airport office at approximately 5:00p.m. to assist in refueling and dispatching the aircraft and to obtain any information for coordination with the ambulance and medical personnel in Brenham.

N4WD arrived at the Custom ramp at approximately 5:15p.m. and Mr. Richardson presented a completed Customs Form #178 to Inspector Teatt (Badge Number 16375). Inspector Teatt returned to his office with the form for a period of five to ten minutes, during which Mr. Richardson and the passengers remained at the aircraft. The delay and lack of any activity during this period seemed most inappropriate in view of the patient's condition and lengthy and strenuous nature of the flight. Upon returning, the Inspector requested that all baggage be removed from the forward baggage compartment and that everyone exit the aircraft. The nurse, Ms. Pelafigue, was adamantly opposed to moving Mr. Dunn as he had experienced a blood pressure increase of 45 points and a heart rate decrease of 20 upon attempting to exit the aircraft four hours earlier in Cozumel. She further opposed the admittance of dogs which were being handled by unidentified persons assumed to be plain-clothes Houston Police officers (the dogs were caged in city vehicles). Ms. Pelafigue, fearing the dogs would upset Mr. Dunn and damage or endanger his interveinous apparatus, elected to exit the aircraft to minimize any further delays and potential excitement or upset to Mr. Dunn. A wheelchair was requested and she was informed that it was not the responsibility of U.S. Customs to provide one. Mr. Chapman assisted Miss Pelafigue in transferring Mr. Dunn with his I.V. equipment to the passenger lounge area. Both the plain-clothes officers and Customs Inspectors were advised by Miss Pelafigue and Mr. Chapman of the danger involved in moving or alarming Mr. Dunn in any way. A fatigued Mr. Richardson, upon questioning the reason for the delay and lack of concern for the patient, was told by Mr. Teatt that if he did not "shut-up" that he, (Mr. Teatt), "Would slow up the paperwork". Mr. Chapman and Mr. Richardson expressed their frustration and disbelief to one another in the presence of Inspector Teatt and Mr. Richardson asked the Inspector his name. The Inspector reacted to this inquiry by placing a telephone call stating to the person called that, "These guys are giving me trouble and want to know my name". Following the call we were told that he was not required to give his name, but could provide us with the name of the person he telephoned, a Mr. Karles. Conferring with one another, Mr.

Chapman and Mr. Richardson agreed to cease any further inquiry or comment in the interest of continuing the flight as expeditiously as possible since all questions and comments were received in a hostile and resentful manner by Inspector Teatt.

Permission was finally received to reload passengers and baggage and N4WD departed for Brenham at approximately 5:45p.m., again receiving priority expedited handling from air traffic controllers.

The delays, lack of courtesy, and life-threatening treatment of a critical patient by U.S. Customs was, in our opinion, inhumane and inexcusable particularly in light of our attempts to coordinate and provide any information to U.S. Customs far in advance of the flight's arrival. Apparently the advance notice provided was used by Customs to orchestrate some kind of "bust" instead of using the time available to ascertain the nature and validity of the emergency Life-Guard flight.

In addition, we feel the following facts are also pertinent to the above described incident:

1. The aircraft and pilots involved have previously been granted letters of exemption from the requirement of landing at a designated airport by the U.S. Customs service.
2. We were forced to move a critical patient, yet the rear baggage compartment was never opened or inspected! (This baggage compartment contained only spare aircraft equipment and lubricants.)
3. Mr. Dunn, who is 80 years old, was accompanied by his wife who was the fourth passenger on the aircraft.
4. Mr. Teatt's name was obtained from his signature on the receipt for payment of overtime charges.
5. The plain-clothes policemen and the other unidentified Customs officer present were courteous and seemed sympathetic to our situation, but unable or unwilling to intervene in the interest of the patient's well-being.
6. Inspector Teatt told Mr. Richardson that he had no advance notice of the arrival of N4WD other than the approximately one hour notice provided Customs by F.A.A. air traffic control.
7. Following the aircraft's departure, Mr. Teatt told Mr. Chapman that Miss Pelafigue had voiced no concern

regarding transferring the patient from the aircraft. This is untrue according to Miss Pelafigue and Mr. Burleson.

8. Mid-Coast Air Charter has operated continuously at Houston Hobby Airport for 9 years and is a subsidiary of Mid-Coast Cable Television, Inc. Clive Runnells is the owner of Mid-Coast Cable Television and A.P. Ranch and is active in civic and state affairs. Jack Chapman and John Richardson have been associated with Mid-Coast for 9 years.

We request that U.S. Customs provide us with a procedure which we can comply with to prevent such mishandling of future medical emergency flights.

We anticipate your timely reply to our protest of the callous, inhumane treatment and total lack of concern for the well-being of our ill passenger. Please contact us if we can assist you or provide any additional information.

Sincerely,

John E. Richardson

Jack W. Chapman

John E. Richardson

JWC/sc

cc: Mr. Clive Runnells, President
Mid-Coast Cable Television, Inc.

Mr. Donald J. Fletcher, Airport Manager
City of Houston

Mr. Beverly D. Draughon, Director
Operations and Regulatory Affairs
National Air Transportation Assoc.

Universal Weather & Aviation, Inc.
Houston, Texas

Mr. Paul Gaines, Director of Aviation
City of Houston

DEPARTMENT OF THE TREASURY
U. S. CUSTOMS SERVICE
HOUSTON, TEXAS

NOV 24 1987

REFER TO
MAN-10-02-H:I DJS

Messrs. Jack W. Chapman and
John E. Richardson
Mid-Coast Air Charter
Hobby Airport
8922 Randolph
Houston, Texas 77061

Gentlemen:

Your letter of November 6, 1987, addressed concerns over the way your arrival at Hobby Airport on October 21, 1987, was handled by the U.S. Customs Service. Your letter raised specific issues regarding the incident which we will attempt to address fully.

1. All previously granted overflight exemptions were cancelled on June 15, 1987. New, more intensive investigative requirements were put into place and all previous holders of exemptions were required to reapply for a term overflight exemption. In your case, an overflight exemption to overfly Hobby was impossible because your destination, Brenham, Texas, is not a designated airport and is not staffed by the U.S. Customs Service.

2. The officers involved insist that they made inquiries regarding Mr. Dunn's condition and were told that he was not critical and could be safely moved. We also note that the officers were willing to be guided by the nurse's assessment of his condition. The officers further state that they offered to help relocate Mr. Dunn within the aircraft while the dog worked, to bring a chair to the plane if Mr. Dunn could be moved to plane side, or to assist in moving him into the office.

3. You are correct that all appropriate prior notifications were made to Customs. The fact that officers were present to meet the plane is evidence of that fact. However, the individual officers assigned to process the flight would have received only the one hour advance notice to report to Hobby Airport.

4. It is obvious Mr. Richardson's concern for Mr. Dunn's welfare resulted in extreme frustration at the Customs processing delays. He clearly voiced these concerns and frustrations to the officer. The officer admits making a phone call to his supervisor to inform

him of the situation and that he was being asked for his name by an irate pilot. He acknowledges that Mr. Richardson was advised that processing could be completed more quickly if he stopped interfering. However he denies telling Mr. Richardson to "shut up or I'll slow down the paperwork." We note that despite the number of people present, Mr. Chapman's arrival and subsequent participation in the discussion, and Mr. Dunn's relocation from and back to the plane, the total time for Customs processing was approximately 20 minutes.

We frequently handle air ambulance or medical emergencies and our foremost concern is for the patient's welfare. However, our primary role in the war on narcotics is to stem the flow of drugs into our country. Sometimes these two priorities conflict. We intend to meet with Mr. Donald Fletcher, Manager of Hobby Airport to discuss means of assistance for similar situations in the future.

Sincerely,

Patricia McCauley
District Director

AOPA
AIRCRAFT OWNERS & PILOTS ASSOCIATION
421 Aviation Way, Frederick Municipal Airport, Frederick, MD 21701, Telephone (301) 695-2000/Telex 89-3445

December 7, 1987

The Honorable William Von Raab
Commissioner
U.S. Customs Service
1301 Constitution Avenue, N.W.
Washington, D.C. 20229

Dear Commissioner Von Raab:

The Aircraft Owners and Pilots Association (AOPA) strongly objects to the United States Customs Service (USCS) denial of an overflight exemption for an emergency medical flight requested on October 18, 1987 for the transport of a heart attack victim from Panama City, Panama to Bellville, Texas. In addition, we protest the inexcusable lack of concern for a human life by Inspector Teatt (Badge #16375) of the Houston Hobby Customs Office.

AOPA, representing the interests of more than 260,000 pilots and aircraft owners, supports all reasonable USCS procedures which are established to reduce the import of illegal drugs into the United States. However, the recent actions by the USCS at Houston Hobby Airport, as stated in the attached letter, clearly threatened the well-being of a United States citizen without justifiable cause.

John Richardson, the owner and pilot of a Mitsubishi MU-2F, was contacted by the family of Mr. James Dunn, a U.S. citizen who had been admitted to the Patilla Balboa General Hospital in Panama City, Panama, after suffering a heart attack, to provide emergency transportation of Mr. Dunn back to the U.S. for medical treatment. Mr. Richardson requested an overflight exemption from the U.S. Customs office at Houston Hobby Airport on October 18, 1987 but was told that this would be impossible. Mr. Richardson, with the assistance of his secretary, the services of Mid-Coast Air Charter, and Universal Weather and Aviation, Inc. provided advanced notice and arranged special services to expedite this Life-Guard flight in the best interest of the patient. He offered to provide any pertinent information which might be useful to U.S. Customs in expediting the handling of the planned flight but was told by Customs that no advance information or preparation would be necessary.

In spite of the combined efforts of Mr. Richardson and Mid-Coast Air Charter to assist USCS officials at Houston Hobby by providing advance notice of this emergency flight and supplying completed Customs forms upon arrival at Houston Hobby Airport, USCS Inspector Teatt (Badge #16375) irresponsibly and in our opinion deliberately threatened the well-being of the patient. Inspector Teatt unnecessarily delayed clearance of this aircraft by slowly processing required paperwork and then demanded evacuation of the patient against professional medical advice that this could be detrimental to the health of Mr. Dunn. The attending nurse opposed movement of the patient based on

Cable Address: AOPA Frederick, MD. Member: International Council of Aircraft Owner and Pilot Associations.

the fact that the patient's blood pressure had increased and his heart rate had decreased during an earlier attempt to exit the aircraft in Cozumel. It should be noted that the movement of a recent heart attack victim can increase stress, change the regulated flow of intravenous fluids, increase blood pressure, or decrease patient heart rate, any of which can result in death. Never the less, Inspector Teatt gave Mr. Richardson and the attending nurse no other option but to move the patient to the passenger lounge area while he performed an incomplete inspection of the aircraft!

AOPA believes that the USCS was totally irresponsible in the handling of this Life-Guard flight. The denial of an overflight exemption for Mr. Richardson, without any explanation, who has previously been granted overflight exemptions under similar circumstances, and the reckless actions by Inspector Teatt are inexcusable and totally unacceptable.

AOPA requests that a formal investigation of the Houston Hobby Customs office be conducted and that appropriate actions be taken to ensure that no United States citizen ever has his life threatened under any similar circumstances in the future.

Sincerely,

John L. Baker
President

DEC 28 1987

John Yodice

DT

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C. 20229

Copies to
SJB GL
12/23

REC'D AOPA
DEC 22 1987
GOVT-TECH

AIR-1-IC:P GNR

John L. Baker, President
Aircraft Owners & Pilots Association
421 Aviation Way
Frederick Municipal Airport
Frederick, MD 21701

Dear Mr. Baker:

This is in response to your letter of December 7, 1987, regarding an incident which occurred at Houston's Hobby International Airport on October 18, 1987, involving an emergency medical flight.

In your letter you specifically object to Customs denial of an overflight exemption to Mid-Coast Air Charter from Panama City, Panama, to Brenham, Texas, and of the alleged mistreatment of Mr. James Dunn, a patient on board the aircraft.

I requested our Houston District to look into this matter and have determined that the overflight exemption, requested by Mid-Coast Air Charter, was denied because Customs does not staff Brenham Municipal Airport. To dispatch Customs officers to a location nearly 100 miles from the nearest Customs staffed location would be an inefficient use of limited manpower resources. Secondly, the officers involved in the clearance of this aircraft have been interviewed and I have learned that after their consultations with the attending nurse on board the aircraft, Mr. Dunn's condition was not deemed as critical and that he could be moved safely. Lastly, in a meeting with two of your representatives in my office on December 8, 1987, it was explained why an intensive examination was conducted on the aircraft and its occupants.

Said why?

Thank you for your interest in this matter. Please let me know if I can be of any further assistance.

for J.W. Lennert
Samuel H. Banks
Assistant Commissioner
Office of Inspection and Control

They had reports that "an air ambulance flight would be [illegible] as a drug traffic flight that day" into Texas. They refused to answer our questions as to when - w/ this report - did they (over)

AOPA
AIRCRAFT OWNERS & PILOTS ASSOCIATION
421 Aviation Way, Frederick Municipal Airport, Frederick, MD 21701, Telephone (301) 695-2000/Telex 89-3445

December 18, 1987

The Honorable James A. Baker, III
Secretary of the Treasury
15th and Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Secretary Baker:

The Aircraft Owners and Pilots Association (AOPA) represents the general aviation interests of over 260,000 pilots and aircraft owners. We strongly support all reasonable policies and procedures to reduce the importation of illegal drugs. However, we object to the United States Customs Service (USCS) inadequate direction to its regional and field service officers concerning the handling of air ambulance flights.

Present USCS policy regarding the granting of overflight permits to air ambulance operators and the clearance of air ambulance flights requires Customs inspectors to make decisions based on their "common sense." It is our view that only a qualified medical professional has the "common sense" to make decisions regarding the welfare of a medical patient.

AOPA requests that you consider the ramifications of allowing a medically unqualified Customs inspector to decide whether a critically ill patient should be exposed to an unnecessary landing or a complete Customs inspection. We urge you to consider the implementation of specific policies and procedures that will reduce the potential for endangering a patient's life, while providing a reasonable amount of protection from drug smugglers. The following are suggestions we believe appropriate for such a policy.

1. An air ambulance operator should request an overflight exemption as early as possible. Only under extreme circumstances should such a request be denied. Customs should allow receipt of an overflight exemption application up to departure time, as well as during flight in emergencies.

2. The applicant should be required to supply all the necessary information normally required for an overflight exemption and in addition:

    a. The name, telephone number, and license number of the attending physician.

b. The name and telephone number for a contact at the admitting hospital. (The attending physician or family of a patient could be required to pre-admit a patient and provide a designated contact at the hospital to expedite customs verification.)

3. Inspectors meeting the aircraft should expeditiously clear the patient, accompanying relatives, and those immediately responsible for the patient's welfare. A critically ill patient's transportation should not be delayed without medical consent. If an inspector questions the validity of the circumstances, he should provide a law enforcement escort to ensure security.

4. Even under non-emergency circumstances, an air ambulance operator transporting a patient for medical treatment should be handled in the same manner as an emergency medical flight—to ensure a patient's comfort and welfare.

AOPA wishes to assist the USCS in providing a high level of protection to the American public while ensuring the welfare and safety of all international travelers. We appreciate your attention to this important issue.

Sincerely,

John L. Baker

John L. Baker
President

mjc

J&S Water Wells

a Richardson & Dunn Corporation

January 8, 1988

Ms. Patricia McCauley
District Director of Customs
P. O. Box 52790
Houston, Texas 77052

REF: MAN-10-02-H:I DJS

Your letter of November 24, 1987, addressed specific items regarding my complaint of the handling of my arrival with a medical emergency flight at Hobby Airport on October 21, 1987. Your specific responses are incomplete and inaccurate as to the actual events that occurred.

1. I am fully aware of USCS investigative requirements; however, I was under the misconception that in the event of a medical emergency flight exceptions could be granted for a direct flight. I would have gladly coordinated any and all activities with local law enforcement officials and USCS officials in order provide the least amount of stress on the patient.

2. Your assessment of the handling of the patient is a misrepresentation of the facts. I personally feel the nurse was pressured to move the patient. Offers to relocate the patient in the cockpit were totally unacceptable due to the cramped cockpit size and intravenous apparatus. The suggestion of the wheelchair and/or chair at the side of the aircraft were not that of USCS but of Mr. Chapman. No attempt to help or provide an air conditioned vehicle, which were parked on the ramp, was made by Inspector Teatt. His manner was irresponsible and deliberately antagonistic.

3. USCS handling of my attempts to obtain prior and efficient processing were either ignored or lost in a bureaucratic maze.

J&S Water Wells
a Richardson & Dunn Corporation

4. I take a great amount of personal offense at being termed "irate". The irresponsible, life threatening actions of USCS and Houston Police dictated my asking who was in charge and what was the agent's name. The total lack of professionalism, the lack of common courtesy and the disregard for human life are not USCS requirements in the war on narcotics. I suggest you review Hobby Tower tapes to determine actual ground time. Concern for human life is not being irate.

In closing I feel you either do not have the correct information on the landing of this flight or you are intentionally misrepresenting the facts. USCS handled my flight improperly. Face the simple fact that you were wrong. Take the time to ask yourself if you want a family member of yours handled the way Mr. Dunn was handled.

Yours very truly,

John E. Richardson

John E. Richardson

JER/smh
enclosures

P.O. Box 675 • Bellville, Texas • 77418
800-833-5538 • 24 Hour Hotline 713-463-0859

December 2, 1987

To: Mr. John Richardson

c/o Mr. Jack Chapman
Mid-Coast Air Charter
Hobby Airport
8922 Randolph
Houston, Texas 77061

From:
Lauren Pelafigue, Registered Nurse
B.S.N./Candidate-M.B.O.

I am writing to you in reference to the letter directed to you from the Department of Treasury, District Director of Customs Service.

Special reference is in regards to the item #2 in that letter.

Upon request of removal from the cabin of the plane, I explained that such removal from the previous Cozumel departure, "my" patient's heart rate had increased, as well as, his blood pressure had decreased. I showed concern for a second transfer.

I stated that I would concede with their wishes, if I could be presented with a wheelchair to mobilize "my" patient to an unknown destination, which could not be determined.

A wheelchair was not conceivable by the custom's officer. They could not locate any vehicle for relocation.

The officer asked me what I wanted to do. I said to remain in the plane with my patient, but I would conform to their wishes with limitations for the safety of "my" patient.

I was then asked on two repeated occasions if he was critical. In the presence of the patient, I feel that this situation deemed an infliction of badgerment by the officer.

I claimed that he was not critical, but has a serious heart condition. The officer claimed he has just trying to do his job. I claimed that I was only doing mine.

The officer, therefore, left to discuss the situation with other fellow workers or his supervisor, unknown to me. He returned to inform me that the other passengers, David Burleson and the patient's wife and I would be allowed to remain on the plane during inspection. I agreed.

Then another officer was summoned to bring two dogs to investigate the plane. This could have definitely affected "my" patient's condition, whether it be physical or mental. I objected. The officer said they could bring out a chair for him to sit in the cool, windy atmosphere. I objected to this also due to the cold and cough that the patient had. At that time, I asked the officer, "Look, is there a chair at the entrance?" He replied that there was. I then said, If you can honestly tell me that the distance would be no longer than the place I am pointing to, I will agree. The officer asked me if he had tried to coerce me. I replied, "No". I realized then that my training as a registered nurse, and my presence on this flight was never recognized as a possible emergency for a cardiac patient.

I would like to state that during the course of the trip from Panama City to Brenham, Texas, I was employed as a registered nurse and legally bound to the patient and his wife to transport Jimmy Dunn on a successful return to Bellville Hospital.

Lauren Pelafigue RN BSN

Lauren Pelafigue, RN BSN

January 8, 1988

To Whom It May Concern:

As we landed John Richardson prepared to get out of the plane. He had all his paperwork completed and proper arrangements made with customs expecting a quick turn-a-round because of the unusual circumstances.

There were several customs agents waiting for us and instructed all of us to get out of the plane. Nurse Pelafigue indicated that she did not want her patient to be moved. After some discussion it was decided that Mr. Dunn and she could stay, but Mrs. Dunn and I were to get out. Then the Houston police were instructed to search the plane with dogs. Again Nurse Pelafigue expressed concern for her patient but was told that they had a job to do. At no time was any effort made by customs to help with Mr. Dunn or to make his situation more comfortable. Customs continued with the search and paperwork indicating several more times they were "doing their job".

John Richardson, as well as the rest of us became upset and tense after the delay and seemingly lack of concern for Mr. Dunn by U. S. Customs. Finally, we were allowed to re-load the plane and depart for Brenham.

Yours truly,

David Burleson

MID-COAST AIR CHARTER*

January 20, 1988

Mr. John Baker, President
Aircraft Owners & Pilots Association
421 Aviation Way
Frederick Municipal Airport
Frederick, MD. 21701

Dear Mr. Baker:

Thanks very much for your assistance in conjunction with our protest to U. S. Customs. We greatly appreciate your letter of December 7, 1987 to Commissioner von Raab.

I'm enclosing copies of our letters and statements in reply to the very inadequate and unacceptable answer to our protest received from our District Director. I fear U. S. Customs has probably closed their file on this most troubling incident.

Again, I want to thank you and also your assistant, Gail Lewis, for your excellent help and support.

Sincerely,
MID-COAST AIR CHARTER

Jack Chapman
Director of Operations

JWC/sc
Enclosures (3)
cc: Mr. Clive Runnells, President
Mid-Coast Cable Television, Inc.

Mr. John Richardson

✓ Ms. Gail Lewis
AOPA

HOBBY AIRPORT • 8822 RANDOLPH • HOUSTON, TX 77061 • 713/644-6479
*MID-COAST CABLE TELEVISION, INC. d/b/a MID-COAST AIR CHARTER

MID-COAST AIR CHARTER*

January 20, 1988

Ms. Patricia McCauley, District Director
U. S. Customs Service
P.O. Box 52790
Houston, Texas 77052

Dear Ms. McCauley:

We have reviewed your letter of November 24, 1987 which addresses our protest and complaint dated November 6, 1987. We find your response inaccurate and inadequate as supported by our original letter, John Richardson's January 8, 1988 letter, and the written statements by Lauren Pelafigue, R.N., and David Burleson. In addition to the above letters and statements the following is offered in conjunction with the points addressed in your letter:

1. With the help of our trade organizations (NBAA, NATA, AOPA) our company stays abreast of availability and requirements for overflight exemption. We have been informed by these organizations and by a U.S. Customs officer that overflights to any destination are not impossible, have been granted, and continue to be granted for medical emergency flights.

2. The Houston Police officers present should further support the statements you now have from four persons which refute the position presented in your letter. Expert medical counsel indicates that Mr. Dunn was indeed critical and that the actions taken by Customs were life-threatening.

3. I remain at a loss why only one hour's notice of a medical emergency flight was given the officers present despite numerous contacts with Customs during the preceding days. Apparently little notice was required to assemble the Houston Police, canine corps, etc.

4. No one exhibited irate behavior. The word "irate" was not spoken by Mr. Teatt in his telephone conversation with Mr. Karles. Mr. Teatt created delays by making an issue of his identity which he proceeded to provide us with on the signed receipt. Despite your implication, my participation in any

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*MID-COAST CABLE TELEVISION, INC. d/b/a MID-COAST AIR CHARTER

discussion was extremely minimal and my presence did not contribute to delay in any way.

According to the December 14th letter from The Commissioner of Customs' office N4WD was the "subject of suspect information". How can the aircraft be removed from the suspect list? What can we do to assist in removing our aircraft or personnel from suspicion?

Lastly, as a concerned citizen and parent, I strongly support the war on drugs and narcotics. I am appalled that U.S. Customs took life-threatening action against a critical patient and then performed an incomplete aircraft inspection! It should require only a very few minutes to inspect all luggage compartments on any aircraft as well as the more easily accessible avionics and equipment compartments. I would be pleased to assist, on a volunteer basis, in the development of an aircraft inspection training program for Customs and law enforcement use. I'm sure our trade organizations (NATA, NBAA, and AOPA) could be very helpful in this regard. Perhaps there is a reason why the rear luggage compartment on N4WD was ignored by your officers?

Again, thank you for your interest. It is apparent that a more thorough investigation is warranted regarding the handling of Mr. Dunn and the inspection of N4WD. We will be anxious to hear of your findings regarding this investigation and the questions presented in this letter. We also will appreciate receiving any information regarding procedures, changes or improvements resulting from your meeting with Hobby Airport Management.

Respectfully,

Jack Chapman

Jack Chapman
Director of Operations

JWC/sc

cc: Mr. John Richardson

Mr. Clive Runnells, President
Mid-Coast Cable Television, Inc.

Mr. Donald Fletcher, Airport Manager
City of Houston

Mr. James C. Piatt, Regional Commission
U. S. Customs Service

The Honorable William von Raab, Commissioner
U. S. Customs Service

MID-COAST AIR CHARTER*

January 20, 1988

The Honorable William von Raab
Commissioner
U. S. Customs Service
1301 Constitution Avenue, N.W.
Washington, D.C. 20229

Dear Commissioner von Raab:

A copy of your letter of December 14, 1987 has been forwarded to us by Mr. Beverly Draughon of the N.A.T.A.

Needless to say, we feel the replies we have received to date from U. S. Customs regarding our protest are quite unsatisfactory. Further examination and investigation by Customs is certainly warranted.

As a citizen with grave concerns for the threat which illegal drugs and narcotics pose for our nation, the deceit, uncaring, and ineptitude exemplified by this incident are most troubling indeed.

Thanks very much for your interest. I will welcome the opportunity to cooperate or assist in any way with any further investigation.

Sincerely,

Jack Chapman
Director of Operations

JWC/sc

cc: Mr. James C. Piatt
Mr. B. D. Draughon
Mr. Clive Runnells
Mr. John Richardson
Mr. John L. Baker, AOPA
Mr. William H. Stine, II, NBAA

HOBBY AIRPORT • 8922 RANDOLPH • HOUSTON, TX 77061 • 713/644-8470
*MID-COAST CABLE TELEVISION, INC. d/b/a MID-COAST AIR CHARTER

12C

Geo-Engineering
Box 1417/200 Court St., Socorro, N.M. 87801 • (505) 835-0377

JAMES W. LAW
Petroleum Engineer
Box 2986, Santa Fe, N.M. 87504
Ph. 982-0472

JAMES R. WOODS
Geological Engineer

8-1-87

MEMB H.B. AUG 6 1987

AOPA:

Please find the enclosed statement by my son, Peter Woods, pertaining to the problem he had clearing Douglas, AZ customs-

We fly into a lake 200 mi south of Douglas about twice a month and have had one problem after another with Douglas Customs-

We have now started flying to El Paso (about a hour longer) just to by-pass Douglas.

I would advise anyone coming out of Mexico to stay clear of Douglas, AZ.

The word seems to be out in Douglas to make clearing into the U.S. as hard as possible for private aircraft.

Sincerely,

James Woods
AOPA# 593809

Superviser:
U.S. Customs Service
Douglas, Az.

On June 30,1987 I entered the country of Mexico, and contacted El Paso flight service station at 12:45 MDT and gave them an E.T.A. for Douglas internatiol airport at 3:30 MDT for later that afternoon.

As I was aprouching Douglas I tried contacting Tucson and Presscot FSS to verify my flight plan, and could not get an answer. Arriving in Douglas I found there were no customs agents there, so the FBO operater called. One hour later two agents showed up and asked me why I didn't contact the FAA and I replied that I did. They then started to knock on the wings, tail, and belly of the aircraft. They then asked me to come inside building and fill out a statement on why they should not confiscate my aircraft and of fine me for not notifing them that I would be landing there. I wrote a statement, one agent bering the badge #10001 read it and said it was incorrect, and said I had to give him five hundred dollars cash or he was going to keep my airplane. I told him I didn't have five hundred dollars cash. He then turned to his partner and said I think the U.S. goverment still takes a check, I told him that I didn't have one but there might be one in the airplane, he told me to go look, as I was walking out the door he stoped me and told me that if I even thought of taking off in the airplane that I had to come down somewhere. I returned from looking for a check and told him I couldn't find one. He then told me to set out in the lobby. Which I did after awhile he returned and said I could go and that I would recieve a fine in the mail and to make that I paid it.

I have been flying in and out of Mexico for a number of years now, and everytime I fly out by myself or with people my age it seems I am harresed by U.S. customs agentts. When I fly out with my father or with people my fathers age I am treated differntly.

I complied as outlined in the entry, transent, and departure requirement as outlined in the entrance requirements under US-5; section 1.4.1.2.1. Where as private aircraft arriving from Mexico may request that advance notice of arrival to customs by individual be in the flight plan that is transmitted to a FAA facility. (ABC; US)

Peter R. Woods
P.O. 1065
Socorro, N.M. 87801

cc
Rep. Joe Skeen
Rep. Bill Richardson
Sen. Jeff Bingaman
Sen. Pete Domenici

Pilot mistaken as drug courier

His plane is wrecked in error

By DAVID LYONS
Herald Staff Writer

BILL FRAKES / Miami Herald Staff

Gustavo Viera, a pilot who was chased and interrogated by federal drug agents, has a new plane now.

One hot afternoon last July, Gustavo A. Viera, a Miami accountant and novice pilot, left work early to take a spin in his newly acquired Piper Cherokee. His flight plan was simple: a joy ride over Biscayne Bay.

But Viera, 28, found the skies most unfriendly, his plane wrecked when the nation's war against drugs mistakenly declared him the enemy.

The flight ended with his single-engine plane flipped upside down, his face in the dirt and federal drug agents pointing guns at his head.

The lawmen — two from the U.S. Customs Service, two from the Drug Enforcement Administration and two Bahamian constables — thought they had rounded up an inbound drug smuggler from the Bahamas. They downed the wrong man.

Loud engines

Now, Viera is wondering what would have happened if a Customs proposal to shoot at suspected drug aircraft had been in effect. He didn't hear or see the big government Blackhawk helicopter that followed him on July 9 until he was on the ground.

"When you're in one of these airplanes where the engine is loud and they shoot out a warning, you're not going to hear it," he said. "I wasn't even aware they were there."

Aside from some cuts and bruises, and 45 minutes in custody when he says he was banged in the back of the head, menaced with M-16 rifles and handcuffed, Viera was unhurt. The plane was wrecked beyond repair. The government said this is to be expected if you live in Dade County.

Rene Betancourt, a friend and client of Viera, remembers seeing his accountant land his plane with the Blackhawk in hot pursuit.

"When he was turning left to get out of the runway, presumably, the pilot of the helicopter thought Gus was trying to run away," Betancourt said. "He made a maneuver with a blast of the prop, and turned Gus' plane upside down.

"When we saw that, we knew they were trying to get Gus for something," he said.

Wrong plane

The agents released Viera after learning from headquarters that they had snared the wrong plane and pilot. Viera fired off a letter of protest to Vice President George Bush's task force against drugs.

Customs and the DEA wrote back. Both were apologetic. Both offered regrets, but no money.

William Rosenblatt, an assistant commissioner in the Customs office of enforcement, pleaded for understanding:

"As a resident of Dade County, Fla., you are in a position to view firsthand the drug-related violence that occurs on an almost daily basis," he said. "It is largely due to the extreme violence perpetrated by those involved in the drug trade, that our officers are authorized to take those steps which, to the average law-abiding citizen like yourself, might seem excessive."

Rosenblatt said, "Our radar temporarily lost the track on the suspected aircraft. Soon thereafter, your aircraft appeared on radar, and based on information received from various sources, it was incorrectly assumed that your aircraft was in fact the suspect."

As for Viera's treatment on the ground, Rosenblatt wrote that the government agents "were only following the standard procedures for ensuring officer safety."

"We found no evidence of either physical or verbal abuse," he said.

Rosenblatt said he hoped Viera would "see fit to support the vice president in the national war on illegal drugs."

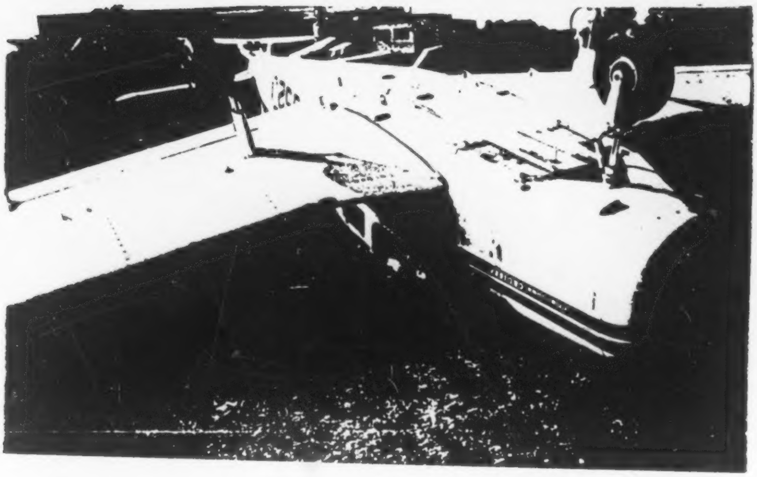
David L. Westrate, assistant administrator for operations of the Drug Enforcement Administration, responded in a similar vein.

"We are quite concerned and deeply regret any possible potential for injury or inconvenience to citizens who are mistakenly caught up in hazardous circumstances," he wrote.

"The war on drugs requires the full effort of government forces in cooperation with each and every citizen and the loss of support of even one citizen is a serious matter."

Roger Garland, chief of the Customs air branch based at Homestead, said it was the first time an accident like Viera's had happened.

"Normally," he said, "we wouldn't even do that to a bad guy."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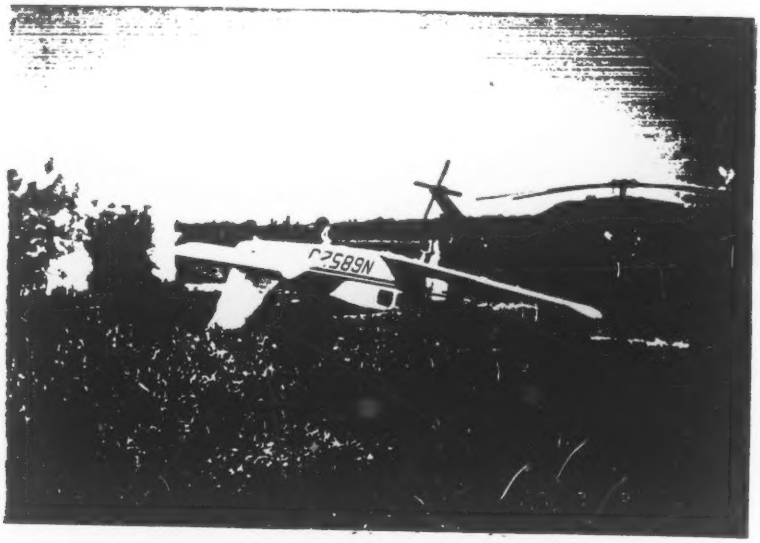
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OFFICE OF THE VICE PRESIDENT
WASHINGTON

October 21, 1987

Mr. Gustavo A. Viera
7610 S.W. 79 Ct.
Miami, Florida 33143

Dear Mr. Viera:

As the Director of the Vice President's National Narcotics Border Interdiction System, I have been asked to respond to your letter of September 18. We have expressed concern and forwarded copies of your letter to the United States Customs Service and the Drug Enforcement Administration to review the incident for appropriate follow-up action including a direct response to you.

Any inconvenience this incident has caused is unfortunate and we are confident that the enforcement agencies involved will respond in a timely manner.

Sincerely,

Howard Gehring
Director, National Narcotics
Border Interdiction System

U.S. Department of Justice

Drug Enforcement Administration

Washington, D.C. 20537

NOV 25 1987

Mr. Gustavo A. Viera
7610 S.W. 79 Ct.
Miami, Florida 33143

Dear Mr. Viera:

Your letter dated September 18, 1987 to Vice President Bush has been transmitted to the Drug Enforcement Administration (DEA) and the U.S. Customs Service for appropriate action and response.

As indicated in the brief response to you from the Office of the Vice President, we are quite concerned and deeply regret any possible potential for injury or inconvenience to citizens who are mistakenly caught up in hazardous circumstances. Based on your report of the incident and knowledge of the enforcement action which was being conducted, I, on behalf of the DEA, wish to extend our regrets for activity which could result in injury or even the threat of injury to you.

Living in Florida, and particularly in the Miami area, I am sure that you are well aware of the illegal narcotic activity which is reported by the news media. The magnitude of the problem in South Florida has resulted in ever increasing efforts by the U.S. Government to stem the flow of drugs into the United States. Increased efforts include highly sophisticated detection methodology as well as extremely powerful surveillance and apprehension capabilities. The enforcement operation which resulted in the unfortunate accident and destruction of your aircraft is a joint U.S. Customs/DEA effort to prevent large loads of cocaine from entering the U.S. to be used for the detriment of the minds and bodies of U.S. citizens. The operation of the helicopter is the responsibility of the U.S. Customs Service, and I am quite sure that as a result of the incident a full review of air operations has been initiated to prevent future accidents.

The war on drugs requires the full effort of Government forces in cooperation with each and every citizen and the loss of support of even one citizen is a serious matter.

On behalf of DEA please accept our regrets for this accident.

Sincerely,

David L. Westrate

David L. Westrate
Assistant Administrator
for Operations

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOV 10 1987

Gustavo A. Viera
7610 SW 79 CT
Miami, Florida 33143

Dear Mr. Viera:

I have recently received from the Office of the Vice President of the United States, a copy of your correspondence to him, dated September 18, 1987. It would appear, having concluded our investigation of this incident, that you are due an apology from the Customs Service for the incident which took place in Miami, Florida on July 9, 1987. I am of course referring to the destruction of your aircraft and your subsequent detainment by U.S. Customs and Drug Enforcement Administration personnel. The events which led up to this incident are as follows. During the afternoon of July 9, 1987, the Customs Black Hawk helicopter which you encountered had been launched to intercept a suspected drug smuggler aircraft. After crossing the South Florida coastline, our radar temporarily lost the track on the suspect aircraft. Soon thereafter, your aircraft appeared on radar, and based on information received from various sources, it was incorrectly assumed that your aircraft was in fact the suspect. It was not until after you were stopped that it was ascertained that the wrong target had been followed.

Regarding your treatment at the time of your detention, our officers were only following the standard procedures for ensuring officer safety. We found no evidence of either physical or verbal abuse. As a resident of Dade County Florida, you are in a position to view firsthand, the drug related violence that occurs on an almost daily basis. It is largely due to the extreme violence perpetrated by those involved in the drug trade, that our officers' are authorized to take those steps which, to the average law abiding citizen like yourself, might seem excessive.

As you know, the President of the United States has declared the drug problem in this country as a threat to our National security. With that in mind, I hope that you will be better able to understand the events of July 9, 1987.

In closing, I would hope that my explanation of those events which occurred on July 9, 1987, along with my sincerest apologies for that incident, are accepted, and that in the future, you will see fit to support the Vice President in the National war on illegal drugs.

Sincerely,

Wm. Rosenblatt
Assistant Commissioner
Office of Enforcement

cc: Howard Gehring
Director, National Narcotics
Border Interdiction System

Mr. CHANDLER. The disturbing thing is that while I would expect that law enforcement people are going to make some mistakes, that we read statements in one case from a pilot who said that an agent treated him very badly. He said that he had to divert from one airport to another because of severe wind conditions. It would have placed his entire aircraft and passengers in jeopardy, but he was told that they didn't care about the winds or anything else, about flying.

The Customs officer did not even want to hear about it. In my opinion, this officer is a disgrace to the uniform he wears. "I could not believe I had landed in the United States. I thought I had landed in Russia." In another instance, two pilots provided a flight, a commercial flight for a client within the State of Florida, from one point in Florida to the next.

When they got back to their airport, where they were based, they were following all relevant procedures announcing there was not a tour airport. So they were on the frequency 121.3, I believe, announcing their position as required to do.

When they got on the ground, finally, after being nearly hit by a helicopter and another airplane that was on the runway, they were surrounded. He says, "I found the agents to be young, overly aggressive and extremely pumped up, all fine qualities to be a U.S. Customs agent, but totally terrifying to an innocent person on the receiving end of M-16's, 9 mm. and so on during a drug bust. These people were later found to have had no drugs, never involved in any drugs at all. They had been mistaken for another airplane. They were forced to the ground and guns put to the back of their heads . . ." and so forth.

Another mercy flight, a man had a heart attack in Panama. They brought him back to Havy Airport at Houston. This 80-year-old man with IV's in his arm and despite the pleadings of a nurse, was forced off of the airplane. Let me just ask you, what are we doing to make sure that when we do end up dealing with law-abiding citizens and that is what you deal with more than anything else, that we don't have them writing in saying they felt like they were being treated like they were in Russia rather than the United States.

Is something being done to put a stop to this?

Mr. VON RAAB. Well, one, some of these cases you described obviously are cases in which some kind of corrective action should be taken.

I don't know whether these complaints were lodged also with the Customs Service. Had they been, we would have investigated many of the cases. In some cases, you have to understand that we inspect over a quarter of a million private aircraft entering the United States every year. And although it is something that we try to avoid, of our 16,000 employees, every once in a while, one of them conducts himself or herself inappropriately, but we do respond to all of the complaints made to Customs and examine them and take corrective action where this happens.

I am not going to excuse inappropriate conduct by Customs officers except to say that it is unacceptable and where we know about it, we go out and we correct it.

Mr. **Chandler**. I will ask the people involved to make sure you personally are advised of these cases.

Mr. **von Raab**. Particularly—Jim, are you aware of this?

Mr. **Piatt**. The Inspector that handled that flight was not advised there was an emergency beforehand. When he got there, in fact, he confronted, you know, this person and they asked, can you be removed from the aircraft and they said, yes.

It wasn't until a couple days later when we got a complaint letter we realized there was an issue.

Mr. **Chandler**. You raise a question about advising Customs, in this case that it was an emergency flight. I guess the intra state one did not involve advising Customs because there would have been no reason to. They hadn't been out of the country. But I do hear complaints that pilots file a flight plan, VFR or IFR, and in the remark section they will ask the flight service station, FAA, to please advise Customs are they not going out of the country. Is this the responsibility of the FAA?

Do we need to provide for a pilot to Customs communications requirement? I know there is confusion about this. What is your understanding of what the requirements are now?

Mr. **Banks**. There really shouldn't be any confusion whatsoever. There is a requirement that people notify us ahead of time that they are coming into the United States and they need Customs clearance. They can do that through a variety of means. One of the ways in which they can do it is radio FAA and advise Customs that they are coming in.

As the Commissioner said, we process over a quarter of a million aircraft a year and we have relatively few problems. There are aircraft that come in from the southern part of the United States that are subject to a time constraint of 1 hour. They have to advise us 1 hour prior to arrival.

That is trying to sort out who are the good guys and the bad guys and to allow our officers to be present at the airport when that aircraft arrives. Otherwise that aircraft is just sitting out there waiting for service, which has in the past been a source of complaints. So there are requirements to advise us ahead of time.

Some of the pilots complained that the communications network in some of the countries in the South is very difficult to manage. We have even set up two Customs locations, telephone numbers that pilots can access and even tell us ahead of time up to 23 hours ahead of time, where they are coming in and approximately when they are coming in.

So we have worked with the Aircraft Owners and Pilots Association and National Business Aircraft Association to address these problems. There are still individual instances, but they are relatively rare. We even publish a fliers' guide and we put out little plastic cards that people can carry in their pockets in order to notify people what airports they can land at, what are the hours of service and how much arrival time or notification is necessary for Customs Service because we want to do the job correctly.

Mr. **Piatt**. Mr. Congressman, I would like to add that we had a situation at Havy Airport where we got a complaint of an officer being heavy-handed. The next day we talked to another officer that was with him. We found out that was true. That officer is no longer an inspector.

He is doing other things that don't deal with the public.

Mr. CHANDLER. I would like to have a copy of that, if I could, if you have an extra with you. The other question is tough because if you are going to inspect airplanes, boats, other kinds of conveyances, where drugs might be concealed, you are obviously going to have to move panels in order to look inside.

But for a pilot of an airplane and especially the owner of an airplane who does not have any drugs and is subjected to that search, I hear the complaint that often times there is extensive, if not damage, at least removal of the kinds of partitions behind the panel and so forth that renders the aircraft unsafe to fly.

Now, whose responsibility is it, then, after that has occurred to repair the damage?

Mr. BANKS. Our officers are instructed to only open certain access panels that are normally opened in like a pre-flight inspection. They may take out certain seats, may take out certain things that don't have anything to do whatsoever with their safety per se. If we are going to go into any section which involves air safety we get a certified air frame mechanic.

We worked with the FAA to assist us in providing us with their inspectors. We have a major conference going on with FAA inspectors right now.

Mr. CHANDLER. Do you have that mechanic? Do you pay for the mechanic and see to it that they replace everything?

Mr. BANKS. They take it apart and put it back, yes, sir. We don't necessarily pay for that in all cases. There are times when we have air frame mechanics that actually were FAA and they do the work essentially free of charge. They do the work as an additional service for us.

Mr. VON RAAB. There are cases in which the aircraft owner has to pay for it himself. There are cases in which FAA will correct it, but in those other cases, the individual owner will have to pay for it himself.

Mr. CHANDLER. Is that fair? Is it fair for a person who has violated no law to have their property damaged by an agency of the Government and then have to pay for it?

Mr. BANKS. In actual fact, I don't know of many damage claims. There are cases where the aircraft has been inspected and there are certain things that have to be put back together. In some of the cases, yes, the aircraft owner is required to pay to put the thing back together, to have it put back together.

In essence, the law provides that a person has to present themselves and their goods for inspection in the United States and they have to pay for the opening. The law provides for that.

Chairman PICKLE. Would you yield?

Mr. CHANDLER. I will be glad to yield to the chairman.

Chairman PICKLE. The Commissioner said there are occasions where sometimes there is damage, you didn't want to leave the record unclear, but it is unclear to me. When we are stopping an airplane and forcing them to the ground, and cause the plane to be dismantled in effect, searched, and considerable damage has occurred, and that person is innocent, that we have the wrong person, as happened in the Florida case, did the Government pay or does the Government pay for the restoration of any damage to that plane?

Mr. VON RAAB. No.

Chairman PICKLE. That is my question. Why not? Is it reasonable to say because the Government made a mistake that we must say so sorry?

Mr. VON RAAB. The law under which we operate provides that the Government does not pay for that. They can file in the small claims area against the Government.

Chairman PICKLE. I am not faulting you for that action, per se. I am trying to find out what is the law, and you say the law is, whatever you do, you do because you think it is necessary to apprehend that particular plane and, therefore, the law says you don't replace the money, the Government doesn't.

Is that true of airplanes in other instances, too?

Mr. VON RAAB. That is true, Mr. Schmitz, our chief counsel—basically it is true, yes.

Chairman PICKLE. I would be willing to listen to chief counsel. Is that a good law for our Government to take, when we cause damage, nevertheless we say so sorry?

Mr. VON RAAB. That is——

Chairman PICKLE. Is that your representation?

Mr. VON RAAB. Our borders are very, very sensitive, and the long-standing practice of every country in the world including ours, is that you must make your car, your plane, or boat accessible to Customs for inspection. If it were the case that the Government would be liable for damages in those cases, you would immediately have the problem that the Government would not do the inspections necessary in order to ensure that narcotics were not coming into the United States.

That is the reason for the law, and we support the law in its present state. We do.

Chairman PICKLE. I am glad I am not a Customs person who would have to apprehend. If you think in good judgment you ought to force somebody down, that is a judgment to make, but we have a lot of instances where that happened where mistakes were made, incorrect judgment was made on the part of the Government.

I raise the question, should that person be made whole, who is an innocent citizen? This is not just in airplanes. This happened in antique furniture shipments where you literally drilled holes through antique articles and literally destroyed it. We have had instances where you brought antique elephants in or articles like that and you chain-sawed it.

That doesn't leave that elephant with a heck-of-a-lot of value. We have had shipments come in from Barbados on ceramics. We have automobiles coming in from the coast that have been dismantled. I don't know that I want to say what is right or wrong, but I think there is a serious question where we are in mistake.

You are saying to me that that is our law. We do not replace it. We are not responsible, so sorry. And what we say is what other countries say, too, the same law.

Mr. VON RAAB. We used to be able to pay for more. A Supreme Court decision called *Kozak* v. *United States* made it impossible for us to do what we used to do to provide some relief. Now, we are limited under the Federal Torts Claims Act basically to $1,000.

The Supreme Court decided providing some relief was inappropriate.

[The following was subsequently received:]

We used to take the position that we were able to pay for more. A Supreme Court decision called *Kozak* versus *United States* made it impossible for us to do what we used to do to provide some relief. Now, we are limited under the Small Claims Act basically to $1,000.

The Supreme Court decided that no relief is available under the Federal Torts Claims Act.

Chairman PICKLE. The Supreme Court said you can't do that anymore.

Mr. SCHMITZ. Mr. Chairman, that is correct.

Chairman PICKLE. Against the wrong person we say so sorry.

Mr. SCHMITZ. There has always been exception for Customs detentions and seizures. We used to attempt to pay in the mistaken case. The *Kozak* case said, no, there is an absolute prohibition. It was passed to permit the Customs officers to pursue their duties.

[The following was subsequently received:]

There has always been an exception under the Federal Tort Claims Act for Customs detentions and seizures. We used to attempt to pay in the mistaken case. The *Kozak* case said, no, there is an absolute prohibition. The exception exists to permit the Customs officers to pursue their duties.

Chairman PICKLE. I am out of time. Thank you for yielding. We yield to you additional time.

Mr. SCHULZE. Let me, for a brief time, state that this is a public relations problem which Customs has.

Mr. VON RAAB. Yes.

Mr. SCHULZE. We have all been advised of instances where there seemed to be abuse and arrogance. You have to try to formulate some kind of reasonable policy. I don't know what that is, but it also seems to me, if you are not successful, we are probably going to change the law, I don't know whether that would be a good move, because we may go too far in the other direction.

But a lot of comments that I have received have to do with the attitude of the agent. Instead of saying I am sorry that we are going to do this, step aside, we are going to do it as carefully as possible. I hear tales, whether true or not, of taking knives and slashing seats, ripping out electronic and electronics that were very expensive to restore. It is the type of attitude that the IRS had a couple of years ago. Their attitude was "we can do no wrong."

I think that is where your problem is. I don't think it is a matter of policy, but a matter of implementing that policy in a way which would make the average citizen say they had to do it, it inconvenienced me, but I can understand why they would do it. In contrast the image sometimes is: Damn it, we are going to rip this stuff out and if you don't like it, that is tough.

I realize that is hard for you to control, but it seems to me that it might be well for you to try to address it.

Mr. CHANDLER. I know I am out of time, Mr. Chairman, but I would like to add more of a comment than a question. This concerns the Southwest United States, including your State of Texas, all along the Gulf Coast of Florida. As Assistant Commissioner, Mr.

Banks knows I have been interested in it for a long time and Mr. von Raab, I want to make sure I have your attention here.

I want to make sure you are listening because this is something that I think we can do as a Government to assist one another, agency to agency. That is to expand and to continue your cooperation with the civil air patrol in helping to provide surveillance flights for drug interdiction.

I don't think we want to say too much more about that publicly, but you know that is underway. I think it has been an outstanding success, especially in Florida.

I believe it needs more attention in Texas. I believe it needs to be continued all along every coast that you are operating in. I would ask you to take a personal look at that to make sure that your people are working with the civil air patrol wherever that assistance is being offered.

I know there are volunteers and I know that it is not part of your agency, but I also know that they are an asset that come very inexpensively compared to the kind of people you have to hire. And they are not going to replace anyone that you have, but they can be a very useful resource. And the chairman, I know, has been very active in the support of the civil air patrol. I commend him for his support because I believe this is something that is a very useful resource in the drug interdiction effort.

Mr. von Raab. I couldn't agree with you more. The civil air patrol program assisting Customs is a superb program. We have tried to work closely. It is really in high gear in the Southwest of the U.S. I am concerned that you characterize the Texas operation as not being as good.

I quickly shot a glance at Mr. Piatt over here and it is going to receive more energy. It is very useful to Customs. We have worked closely with the head of the civil air patrol. We shouldn't go into it further. I agree, but it deserves all the attention we can give it.

I might go back to the issue Mr. Schulze raised. The Secretary of Treasury raised this issue with me, Mr. Baker 1½ years ago over whether the Customs Service was conducted itself appropriately with respect to the general public.

Following that discussion, we have made a lot of efforts to ensure where we can that our officers conduct themselves appropriately. It is in their training. We have two training courses that address this directly and it is in their own performance ratings. We have received about 1,400 complaints at the region and the headquarters of a nature in which there is enough information to be able to deal with the complaints.

This comes out of 315 million people that enter the United States every day, 190,000 vessels, 430,000 aircraft of one type or the other, five million trucks and 92 million passenger vehicles. We get some of these referred over by Congress.

I am not at all suggesting that we should lessen our concern for this, but I would merely point to the statistics of 1,400 complaints against literally, you know, hundreds of millions of people interacting with the Customs Service every day. At least it shows that we are doing a pretty good job.

Mr. Schulze. If there are multiple complaints on one agent, do you look into that and take action. If it is isolated instances, I understand. If you get the same people with an attitude problem, that is a clear opportunity to have something done.

Mr. **von Raab**. Any complaint that comes to my attention, I deal with directly. Obviously, the agency has a system in which I don't receive every piece of paper, but as I indicated earlier, I think you were out for a few seconds, I will call personally district directors and ask them about it.

And so my personal involvement in this, the purpose I do this is to make them know this is a policy of the Customs Service that we don't tolerate that kind of conduct.

Chairman **Pickle**. Well, let the Chair say that your time has expired, Mr. Chandler, and we will go to Mr. Dorgan. We are not accusing you of being high-handed or ruthless in your investigation at the borders.

The question really is what should be our policy? Must the Government not take any responsibility when they dismantle and cause serious damage to an item or should we say, well, the Supreme Court has taken away what little help we can give and we are sorry.

What policy should we have? It doesn't pertain to the volume. You have a problem about what to stop and who to stop, but we try to decide what is good policy. We can't make that decision now. We have enough complaints where people have been ruthlessly stopped and damaged and nobody wants that.

Mr. **von Raab**. That is wrong.

Chairman **Pickle**. I am sure you share the same feeling. The Chair recognizes Mr. Dorgan.

Mr. **Dorgan**. I was intending to ask a series of questions, Mr. von Raab, about administration at Customs. But, as a result of watching an investigative report by NBC last week, I decided to ask a series of questions about the helicopter sales to North Korea.

Who knew about them? I understand you have a big agency with dedicated people and with a few hot dogs who are overly zealous and treat the public improperly. You have to figure out who they are and bring them into line. I understand all of that. I don't have any real major problems with the Customs Service.

In our State, we have a long common border with Canada. I think generally we have had good experience with Customs. The folks up there are dedicated employees and try to do the best job they can. We have complaints from time to time and I send those on down.

I wanted to say that I understand the difficulty of running an agency of that size, and when problems become evident, I hope that quick and effective administrative action is taken to remedy them.

I wanted to ask about the subject that was raised again last night by NBC news, because I was troubled. The more I thought about it, the more troubled I became. You are familiar with the incident. In the 1982–1985 period, 86 Hughes 500 helicopters were shipped from this country and ended up in North Korea.

There is apparently clear evidence that a CIA agent in Europe and CIA headquarters here in this country knew the helicopters were being shipped through Europe and transshipped to North Korea.

The news in that story showed that one intelligence agency knew that military goods were being shipped from Marica ultimately to North Korea in contravention and violation of the Export Control Act and that the CIA did not share that information with Customs, which is the agency that we require to administer the Export Control Act.

I would like to ask first, what is your reaction to the story last week? What do you know about this? What did you know about it then?

Mr. VON RAAB. Well, my reaction to the story, and I hope there are some reporters present here, is that it was a really bum rap on the CIA; that our agent, who spoke to the President, knew what he was talking about. I am sorry that he took it upon himself personally to say what he said.

This is——

Mr. DORGAN. Agent Peters?

Mr. VON RAAB. Whoever it was. Some information had to have been passed to the Customs Service. Based upon that information, we were unable to find out successfully when those helicopters were leaving or where they were leaving.

I can't testify to the degree of information that the agency had. All I can say is the agency did pass us information, and that we tried to act on it. We actually had our office in Los Angeles and our Office in Germany trying to deal with the information that was passed to us, and by the time we were able to develop enough information on where they were leaving, they had left.

As you know, we did have a successful case on 15 of those helicopters later on which is what they were talking about. No one does a perfect job in the export of what appears to be civilian equipment leaving the United States, which is what those were when we left. They did not require a license.

Therefore, it was not necessary for us to go through the Commerce Department. And the violation of law was that they were sent to North Korea. And if helicopters are leaving the United States, apparently for a friendly country and they end up in North Korea, that is a violation of law, but you don't typically stop them at the border just because you think they might go to North Korea.

Therefore, the information that was available to us, and as I said, I don't know what the agency had in its entirety, but I think it was very unfair for the press to criticize the CIA the way they did. These helicopters at one point were in a port in South Korea, as well.

The ship was continuing on. So it is just the whole case is in the nature of the difficulty of controlling what appeared to be legitimate exports from one country which ultimately end up in a proscribed country. I am very distressed that these helicopters ended up in North Korea. That is a terrible result. But I think it is unfair to lay the blame on the CIA for failing to inform the other agencies in the Government.

It is just not fair.

Mr. DORGAN. Are you saying the CIA didn't have the information?

Mr. VON RAAB. No. I said the CIA passed us some information. We tried to act on it. But the statement that was made in the press that the CIA failed to inform other agencies is just blatantly untrue.

Mr. DORGAN. If the CIA had the information and if the report is accurate that the CIA knew this was going on, but didn't want to expose a source, apparently European source, that had provided the information, it either gave you sufficient information about what was going on for you to stop it or it didn't give you sufficient information.

Mr. VON RAAB. I believe the Customs Service did not do the kind of job it should have done with the information that the agency had given it. We can argue over the sufficiency of the agency's information, but I don't believe that our Los Angeles office did a sufficient enough job with the information that we had.

Now, we can argue about whether it was enough or whether reasonable men could have made a good case out of it, but I think it was unfair of the press to lay the blame for this entirely on the CIA. I think some of the blame deserves to be laid on the Customs Service.

I think some of the blame deserves to be laid on a system in which civilian equipment like this can leave the United States quite freely. There is no law against the exportation of these helicopters to friendly nations. They are not even licensable.

Mr. DORGAN. I understand that. The report last week, baffled me, because it showed that Lloyd's of London had an insurance policy to insure the helicopters against seizure and they were going to North Korea.

If the CIA knew that and gave you the information, and if your west coast office did not properly act on it, what has been done since that time procedurally to deal with the west coast office or all offices so that we don't allow any more helicopters to end up in North Korea?

Mr. VON RAAB. One thing that happened in the Customs Service, that at the time that information was passed, which right away as properly in the first few months of my term, we had two people in the Customs Service that dealt with intelligence information.

We now have over 100. They are well-trained. The two people were very nice. They are energetic, but they didn't know a damn thing about what to do with sensitive information which was passed to the Customs Service. We now have a well-trained intelligence unit of well over 100 men and women who have received first class intelligence handling information.

We have much better exchanges of information between the intelligence community and the Customs Service, so the difference between the period in which that information was passed and today is the difference between the caveman and an astronaut in terms of handling of this information.

Mr. DORGAN. You have something called Operation Exodus which I understand is administered by each of the various regional commissions. In your judgment, would Operation Exodus, as it is currently configured, have interceded and prevented these helicopters from going to North Korea?

Mr. VON RAAB. There are two factors today that would result in a much greater likelihood that these helicopters would be intercepted, I would hope almost a complete assurance.

One is effective exchange of information between the intelligence community and the Customs Service which didn't exist in those days. By the way, that wasn't the agency's fault. That was the Customs Service's fault.

It didn't have the capability to receive it 7 or 8 years ago. Second, Operation Exodus in which our inspectors and our agents have been trained and have had now 7 years of experience in dealing with those kinds of problems. Those two factors would be things that would prevent this from happening again today.

Mr. DORGAN. I think 7 or 8 years ago the helicopters were actually shipped up through 1985.

Mr. VON RAAB. That is right. Gradual improvement is taking place.

Mr. DORGAN. The only question I am trying to get at is Operation Exodus. We were told when we interviewed the Acting Director of Intelligence for the Pacific Region, that you have had in the past and continue to have access to the entire U.S. Intelligence community.

I just don't understand quite why, if the CIA knew exactly what was happening, helicopters were being purchased in significant quantity from this country and being transshipped through Europe to North Korea. Why, if Customs was told about that, did Customs not do something?

Mr. VON RAAB. The operative adverb in your statement is exactly.

We knew exactly what was happening. In the intelligence world, no one ever knows exactly what is happening.

You get a piece of information back that says a reliable source has indicated that there will be an effort over the next 3 or 4 months to ship aircraft from the west coast of the United States to North Korea. That is the kind of thing that you have got.

So what it means then is that you in effect have to take a look at every shipment of any aircraft out of the United States to any country in the world and try to determine whether there is a possibility that that aircraft will then be reshipped to North Korea because no one certainly is going to ship those things from San Francisco to North Korea.

Mr. DORGAN. That is a routine problem for you.

Mr. VON RAAB. Yes, but the important thing is exactly. No, we didn't know exactly and the agency didn't know exactly. They didn't know what day, that sort of information that is useful to Customs.

So I am trying to say it is unfair to have the presentation analyze the issue and criticize the agency when I think they were doing a good job. Whether they were doing a perfect job, nobody ever does a perfect job.

Mr. DORGAN. Everything I hear about the agency is confirmed 5 or 10 years later.

Chairman PICKLE. Would the gentleman yield?

I think this committee is not trying to pass judgment on where the error occurred and it is normal that you would defend CIA who apparently didn't know these shipments were underway.

You say you are not going to blame Customs because Customs wasn't a factor.

You say then who do you blame? We are not trying to blame somebody, but the helicopters ended up in North Korea and they shouldn't have been there.

Somewhere along the line they ought to be apprehended. I don't think it does any good to say the presentation analyzed it. We ought to tighten our procedure.

You say you didn't have but two inspectors in the CIA field. Now you have 100.

Are you telling me you have 100 added within the last year?

Mr. VON RAAB. I was explicit in saying Customs deserves some of the blame and that the CIA was unfairly blamed. I didn't say that any of us were perfect in this exercise.

Internal intelligence officers have been brought on over the past 4 years. They weren't all brought on in the past year.

Chairman PICKLE. We are not trying to say who specifically was to blame. The fact is it occurred and somewhere along the line we have to ask ourselves, how did that happen, how can we stop it.

I am encouraged that you say you have added 100 new inspectors or individuals in the field who deal with CIA-related matters.

Mr. VON RAAB. The intelligence community itself.

Chairman PICKLE. So you have added 98 within the last year?

Mr. VON RAAB. I said over the past 5 years we have added at least 100 in this area whereas when this information was passed, there were only two.

Chairman PICKLE. I thank the gentleman.

We have to pursue this further.

Mr. DORGAN. I indicated that I thought the difficulties that you face in the Export Control Act are significant, but also routine.

Over and over again, there are those who would like to take sensitive things from this country that may not be military, but are the kinds of materials that we don't want to end up in the hands of North Korea or the Soviet Union and others.

That is not an easy thing for you to deal with, but in order to properly administer and be involved in the interdiction of these kinds of shipments, you are going to have to, it seems to me, have appropriate staff and appropriate manpower to do that.

During your term as the head of the Customs Service, we have had a dramatic increase in international trade. We have had an exponential increase in the volume and yet the administration has consistently low-balled their request to Congress in terms of what their needs are.

In fact, Congress has generally provided more than you have requested in order to try to keep up with the requirements at Customs.

In an area such as the Export Control Act, I would think it is very critical to have the kind of resources and manpower available to deal with these issues?

Mr. VON RAAB. We are not short of resources in the export area and——

Mr. DORGAN. But you have said that in every area over the years. This Congress has heard that every year and as the volume of trade increases and as your manpower is pulled off to deal with drug issues, I don't understand how you can suggest to us——

Mr. VON RAAB. In the export control area, it has been the Congress that has limited our ability to put people into the export control area. That is one of the few areas in the Customs Service in which at least under some of our appropriations we are restricted in terms of what we could put into that area. Nevertheless, that restriction was not unreasonable.

I am saying that we have not been encouraged by Congress to put more people into the export control area.

Mr. DORGAN. Mr. Chairman, I would just observe that over these years, Congress has generally appropriated more than Customs has requested, very similar incidentally to the IRS, who said we can lower tax rates and collect more taxes and have fewer people to enforce it and we will save everybody money.

I never understood that and we nearly decimated the Internal Revenue Service.

It is incongruous to see low-ball requests of needs when we see stories of issues under the Export Control Act and other areas where I think additional manpower would have prevented serious mistakes.

I yield back the balance of my time.

Chairman PICKLE. The Chair will recognize Mr. Schulze for an additional question.

Mr. SCHULZE. As a footnote, let me say that on export amendments, from time to time we have had votes to give DOT more authority in this area.

I have consistently supported giving them more authority in that area, but that has failed consistently.

It seems to me Congress must share the blame in these instances because we have said no we don't want DOT involved. This was not on a prohibited list and as a result there are not those checks and balances.

I wanted to ask you about discontinuance, but I am going to jump over that and talk to you about air carrier smuggling prevention.

I have heard reports of instances where airlines have cooperated with Customs in drug seizures, even identifying suspicious shipments or passengers, and yet particular airlines have been fined large fines by Customs.

The acting commissioner was here some time ago and I asked her about that and she said that is not true, that never happened.

I presumed at that time she just was not aware of it, so I didn't follow through because I had the information then of when it happened and how it happened and what happened.

I presume you are aware of it because you had corresponded in regard to this. First of all, are you aware of the incidents that I am talking about?

Mr. VON RAAB. Yes.

Would you like me to respond generally?

Mr. SCHULZE. I am short on time, so let me be specific.

It seems to me we should encourage the airlines. When they are forthcoming and their information actually leads to a seizure of contraband or drugs or anything else in violation, that we should reward them and pat them on the back and say thank you instead of zapping them with a fine.

I forget whether the fine involved was $1 million, or $1.5 million. If that is the policy, somehow we have to either change the policy, loosen it, and give you more discretion. Or we have to have people out there who are going to change this.

In the drug bill, this policy has led to a change in the law whereby we are going to allow them to have a pre-clearance inspection and it was these types of incidents that led to that.

So my question is not so much why did this happen; I believe it was wrong, maybe you don't believe it was wrong, but I think it was wrong because it does have the effect of discouraging the airlines.

But my question is, where do we go from here? Do you think that is a good policy? Should it be changed? What are you doing to encourage airline participation and not intimidating them by large fines?

Mr. VON RAAB. I agree that it should not happen. It has happened in two general types of cases of which I am aware.

In some cases, if we have a cooperating informant or someone within the airlines organization, we often publicly fine the airline in order to protect the airline's employees and I can tell you that in a number of cases what appeared to have been fines were not and they were never collected as soon as the issue passed.

Second, there is an issue of the level of due diligence that the airline should meet in order to avoid the fine.

We have crafted agreements between the airlines and the Customs Service defining what we think are the responsibilities of the airlines, and if they meet those responsibilities, we then will not attempt to take a fine from them.

There may be a fine issued initially, but that is just preparatory to reviewing whether they meet these requirements.

In many cases, the airline agreements track with some of the language of the initiative that some Members of Congress are encouraging with respect to some sort of arrangement with the airlines.

That is a very tricky area, however, and that is if the burden of proof with respect to whether the airlines or any other carrier for that matter met the appropriate degree of care. We believe that must be kept with the airline.

So they must show to the Government that they have met their responsibility rather than having the Government have to prove they failed to meet their responsibilities because in many cases the proof lies in foreign countries.

Mr. SCHULZE. One that comes to mind is where the quantity of drugs was found behind a bulkhead and the airline immediately checked other planes of that style and type that had taken that route.

They called Customs and said, "Here is a list of planes that have followed that route. You want to check them."

They checked and did find drugs in that location and eventually were fined for it.

It seems to me that is not the direction in which we want to go.

Mr. VON RAAB. In that case, the airline did not tell us about the drugs on the other planes. We found them ourselves.

Mr. SCHULZE. Let's get it straight because I was told that the airlines on their own said let's check other planes which had made that circuit and that they then volunteered the information to Customs, they said here are others planes which should be checked.

Customs then checked it and found the drugs.

Mr. BANKS. We went to that air carrier after finding the first instance of narcotics on board. We went to the carrier to check other aircraft that had followed that route.

They provided information of their routing and equipment utilization.

They cooperated with us in order to put specialized equipment on board the aircraft with which to track it appropriately in order to make the follow-up arrests.

So they were cooperative after the fact in pursuing the narcotics.

Mr. SCHULZE. If that were my business and I knew that was going to happen, I would look behind that panel. I would get it and I would get it out of there.

That is what you are encouraging and we don't want to encourage that.

Mr. VON RAAB. We are trying to encourage them to maintain sufficient security overseas for people having legal access to the aircraft.

Mr. SCHULZE. You are saying they don't want that, that they would like this to happen?

Mr. VON RAAB. We are saying that many of the airlines, many of the carriers have taken the attitude in the past years that that is not their responsibility. They are not responsible if somebody tries to put narcotics on the aircraft.

Mr. SCHULZE. You are saying the airline industry is saying that or you are saying there are some—I don't want you to tar them all.

I am saying we have to use a little bit of reasonableness. If someone is attempting to cooperate, don't smack them between the eyes.

The American people are smart and if they know they are going to get smacked between the eyes, next time they will say, "The computer is broken. We will be able to help you in three days," and they check the planes and get rid of it. That is not what you want.

You will be more successful if when they cooperate, you send a letter of commendation and it goes into the guy's file. "Thank you for the help which led to the arrest or apprehension of 18 pounds of cocaine."

I would like to look into it. It is an area which I believe should be addressed so that we get cooperation instead of antagonism.

Mr. VON RAAB. With respect to this case, normally I wouldn't like to do this, but I think it is important here.

The airline where we found the drugs the first time, the second time they were generally cooperative.

We did assess a penalty against the subsequent seizures. The reason we did that was to ensure that there wasn't some involvement of people within the airline for which we think they would have been responsible.

I have been checking here and the plan is, and it will be happening shortly, that the region is recommending that the plan—or sort of thought about it, fines against that airline for subsequent seizures are going to be lifted so that there may have been a period of nervousness on the part of the airlines, but their cooperation——

Mr. SCHULZE. I agree that it looks like it might have been an inside job. I can't hold them responsible. I would go to them and say, how do we——

Mr. VON RAAB. Ultimately we will be saying we did not hold them responsible.

Mr. SCHULZE. My apprehension is premature?

Mr. VON RAAB. The end of the story is a happy one. It is not an unhappy one.

Mr. SCHULZE. Thank you.

Thank you, Mr. Chairman.

Chairman PICKLE. Mr. Commissioner, for my information, how much actually has been collected from airlines in a case where they have passed on information to Customs and goods have been apprehended? How many fines have you collected?

Mr. VON RAAB. We think there are none.

Chairman PICKLE. There are none?

Mr. VON RAAB. We collected about a million dollars in fines last year and those were all from uncooperative airlines.

Chairman PICKLE. Your procedure is you fine the airline, but then you don't collect it?

Mr. VON RAAB. Exactly.

It is like if you get a traffic ticket, you know that you are subject to a certain fine, but then ultimately when it is examined, there will be a determination as to how much you should pay.

We give someone in effect a ticket which says you are subject to a certain fine and then when we investigate it, we decide what the fine should be.

In the case of cooperating airlines, the fine is usually zero.

Mr. BANKS. In some cases, the cooperation began after the fine was levied. That airline introduced a number of new measures to make sure narcotics weren't introduced on their aircraft.

Mr. VON RAAB. The Customs Service believes the airline industry is very cooperative. That is not a problem that we see. There has been a tremendous change in attitude among the entire public of the United States that the airline industry, the Airline Pilots Association, whoever it is, are taking up the responsibility to police and to concern themselves with drug violations and that is great and that is what we are after and that is all we want.

Chairman PICKLE. Mr. Commissioner, we have had the signal that there is a vote on the way. The Chair is going to recognize Mr. Anthony who has a question and I am going to vote and be right back.

I am hoping we can wrap this up within the hour rather than go into it after lunch.

I will recognize Mr. Anthony and return.

Mr. ANTHONY. Thank you, Mr. Chairman.

Mr. Commissioner, I would like to ask a few additional questions along the same line I was pursuing earlier. I would then like to close by addressing cargo examinations and utilization of the current computer system you have, and bring to your attention a few cases which have been brought to our attention—and again understand we are in this for the same purpose which is better service to the people who are utilizing the system.

Has project 6000 been concluded?

Mr. VON RAAB. It will be concluded at the end of the month.

Mr. ANTHONY. Can you give me a percentage of how far we are along? I would like to know how many cases have been settled, how much money has been collected, and how many claims you have outstanding.

Mr. VON RAAB. Just a second while we get our act together here.

Mr. ANTHONY. First tell me when project 6000 actually started—refresh my memory.

Mr. SCHMITZ. Congressman, it started—the billing for project 6000 is those cases that were billed on October 31, 1987. So if it wasn't billed, if it didn't have a billing code for that date, it was not in project 6000.

Mr. ANTHONY. We are basically talking about cases prior to October 31, 1987?

Mr. VON RAAB. Basically, yes. There could have been some cases that the bill wasn't completed or there was a piece of information that wasn't there so we didn't send out a bill.

Mr. ANTHONY. But percentage-wise, it would be very small after that date?

Mr. VON RAAB. That is correct.

Mr. ANTHONY. You say you are going to finish it by the end of the month, so I assume then you are very, very close to pulling in everything you think you can pull in?

Mr. SCHMITZ. We have handled approximately 13,500 cases. There are approximately 600 left.

Mr. ANTHONY. How much money have you collected and how much money do you hope to collect in the remaining cases?

Mr. VON RAAB. There is $6 million that has been collected, and I would have to provide for the record what we figure is left. Because we are in negotiations at this point on the remaining 600 as to what that settlement ultimately will be.

Mr. ANTHONY. We will stay away from that.

So you have collected $6 million. You had 13,500 cases that have been settled, and you have got 1,500 cases that are in the process of negotiation?

Mr. VON RAAB. Correct.

[The following was subsequently received:]

Approximately correct. The project involved approximately 13,500 total cases of which all but 600 have been resolved for purposes of the project.

Mr. ANTHONY. What instructions did you give to the field staff in terms of providing documentation to the sureties regarding copies of the entries and bonds involved in project 6000? What did you tell them?

Mr. VON RAAB. In order for us to deal with the cases, this would be mutual. We will both need this information so that they can come to us and we can deal with them. They were not to include in 6000 any case that did not include the necessary documents so both the Customs Service and surety were certain of what they had between them.

In other words, we didn't want to negotiate what we were missing, either we or they were missing documents.

Mr. ANTHONY. Your telex said you were not going to provide any copies of entries or bonds?

Mr. VON RAAB. Not to the surety.

Mr. ANTHONY. You were going to make them do that work.

Mr. VON RAAB. Yes.

Mr. ANTHONY. What if the surety couldn't find it? What would happen? You give them 30 days to pay. Under the law you have the authority to stop them from writing any bonds.

Mr. VON RAAB. That is correct.

Mr. ANTHONY. Did you do that in any of these cases?

Mr. VON RAAB. We have moved into the sanction mode with some sureties, yes. We have issued letters of sanction.

Mr. ANTHONY. Have you actually cut off anybody? Mr. von Raab, in your announcement on project 6000, you announced that there was $500 million owed to the U.S. Government. You only collected $6 million so far. Is that a fair return?

Mr. SCHMITZ. That gets back to the billing problem that goes on first as to what the value——

Mr. ANTHONY. The reason is that this unliquidated damages figure inflates what you actually get back?

Mr. SCHMITZ. That is correct.

[The following was subsequently received:]

An example might be helpful. An importer enters $100,000 worth of merchandise. Within 10 days, he must file an entry summary containing all the information for Customs to determine the duties owned on that merchandise and he must deposit estimated duties with the government. Using 5 percent ad valorem duty rate, he must deposit $5,000 within 10 days. The importer also makes entry under a Customs bond which provides as a condition for the immediate release of those goods that he will satisfy the foregoing responsibilities or, failing to do so, pay liquidated damages equal to the value of the merchandise involved in the default, or, in this case $100,000. This liquidated damage is triggered as soon as the 10 days expires. However, pursuant to the agency's authority under 19 U.S.C. 1623(c), most of these claims are canceled upon compliance, although late, with the entry requirements. Cancellation occurs upon payment of a nominal sum of $100 to $200 for the administrative expense associated with the technical breach of failing to satisfy the 10-day requirement. Of course, if the importer is significantly delinquent, the claim would be canceled only upon payment of a much larger sum. If the entry summary is never filed and the duty never deposited, the claim would be processed for the full amount of $100,000.

Mr. ANTHONY. As long as you are comparing numbers equally across the board, you still know what the ratios are?

Mr. SCHMITZ. Yes.

Mr. ANTHONY. So you have to make sure you can compare apples and apples and oranges and oranges.

Mr. SCHMITZ. There are two sureties who have voluntarily withdrawn from writing Customs bonds and there is one surety that is currently in the sanctioning process.

Mr. ANTHONY. Can you give us those names for the record?

Mr. SCHMITZ. For the record.

[The information follows:]

Eighteen months ago, Investors, Insurance Company of America ceased writing Customs bonds. As part of a settlement, Peerless Company has chosen to terminate its Customs bond writing business. Two other companies, American Home Assurance and Union Fire Insurance of Pittsburgh had been sanctioned, but are now released from sanction.

Mr. **Anthony**. When I asked the question earlier to the Commissioner, he gave us a list of other people in addition to Washington International Insurance Company who are now receiving the tape.

Could you tell me at what date the tapes were made available to the other people on this list, with the exception of Washington International?

Mr. **von Raab**. In the summer of 1987, we were consulting with the surety association and the American National Surety Association, a couple of surety associations in order to allow them to make their members aware of the availability of these tapes.

Mr. **Anthony**. How many members are in that association?

Mr. **von Raab**. I don't know.

Mr. **Anthony**. Would you be surprised to know that there is not but one?

Mr. **von Raab**. Having just been given this as an answer, I am surprised to hear that.

Mr. **Anthony**. If I am incorrect, I hope you will correct it for me, and if the staff has any additional information that refutes my comment, I wish they would also inform me.

I have been led to believe that you negotiated with an association which has one member?

Mr. **von Raab**. I have always been a believer in that associations were the wrong people to negotiate with on these issues.

It certainly is the height—the question——

Mr. **Anthony**. It is my understanding that these companies were given permission to get the tape only 2 weeks ago. Is that right or wrong?

Mr. **von Raab**. You may be right.

Mr. **Anthony**. I would be happy to testify for Customs——

Mr. **von Raab**. I am being informed that we started this process in the summer. Whether the technical levers were only pulled 2 weeks ago——

Mr. **Anthony**. It is very important for me to get on the record the precise date by which sureties had access to information, and not the precise moment at which you started thinking about giving them access to information—because if I am a surety, and you merely think about giving the information to me for 1½, and I only get it 2 weeks ago, there is a major difference between my capacity to compete in the marketplace between your thinking and actions.

It is my information that it was only 2 weeks. Assuming that this list, with the exception of the one at the top, only got it 2 weeks ago; and Washington International has had it since 1987, under a pilot project noncompetitive bid; and documentation shows that as early as 1985 other companies in the surety business in competition with Washington International wrote you and asked you to be included in the automated interface but they were never ratified, and the public record asking for comment says that you have dealt with a surety and the surety was not identified, would all of these factors not be factors one should consider in determining whether or not a sweetheart deal has been struck at Customs with Washington International?

Mr. **von Raab**. You are absolutely right. If the facts as you present them are correct, there is going to be a shake-up in the Customs Service.

Mr. **Anthony**. If my facts are incorrect, would you introduce a statement for the record clarifying it?

Mr **von Raab**. Absolutely. I am very concerned.

Mr. **Anthony**. If my statements are correct, I want you to give me the additional follow-up of how you shook up the Customs.

Mr. **von Raab**. You will get that and I am very concerned.

Mr. **Anthony**. I am concerned that everybody be treated equally in the marketplace and that there are no sweetheart deals cut with Customs or Treasury, and that nobody had the ability to out-compete because of a special relationship and that all information be given and provided to all sureties on an equal basis so they can compete on their ability to provide service.

Mr. **von Raab**. That is the policy upon which the Customs Service is supposed to be run. If it is not, it is wrong.

Mr. **Anthony**. I appreciate your attitude, and I assume that you will do as you say and follow up on that.

Quickly jumping to another matter, and I am not going to have enough time to go into this in detail, so I will submit documentation for the record—I am concerned about the proper utilization of your staff people by your computer model, and also that in some places you are not only understaffed but that they are being driven more by the computer than by their God-given talents and the abilities they acquired through their job training

My time has expired. I will submit for the record these examples, and request you respond back as to whether or not this is cause for concern or if it has already been addressed.

Thank you for your testimony.

Chairman **Pickle**. Without objection, your questions will be part of the record.

[The information follows:]

THE COMMISSIONER OF CUSTOMS

WASHINGTON, D.C.

December 8, 1988

RECEIVED
DEC 09 1988
Ways and Means
Subcommittee on Oversight

Dear Mr. Chairman:

In response to your request of October 31, 1988 we are providing answers to questions regarding Customs commercial processing practices and cargo examination.

Yours faithfully,

Acting Commissioner of Customs

The Honorable
J.J. Pickle, Chairman
Subcommittee on Oversight
Committee on Ways and Means
House of Representatives
Washington, D.C. 20515

Enclosures

QUESTION: Several senior inspectors testified before this subcommittee on June 9, 1988, that they have entered, and that it was Customs policy to enter false intensive examination results into the Automated Commercial System. Please comment. These same senior inspectors testified that historic data on importers collected under a Customs program identified by the acronym ACCEPT was not entered into the Automated Commercial System. Please comment.

ANSWER: In response to the first point, these inspectors were referring to a problem Customs faced as each port was converting to the National Automated Commercial System. Unless the national system recognized the importer number as having been in the previous system, the automated system created an intensive examination. At the time, management decided that all first time importers must be intensively examined. This policy soon overloaded inspectional resources with intensive examinations based on misleading designations as first time importers. In order to relieve the unnecessary burden of performing meaningless examinations, it was decided to allow local managers the prerogative of reviewing all first time intensive designations to determined if those importers had a previous history of importations and if no derogatory information was found, the intensive exam could be waived. This was done based solely on local experience with importers, inspector experience and importer files on hand. To accommodate the automated system, and to prevent countervening the systems requirement for examination results, a negative response was input as examination results. In no case was a true first time importer's shipment not examined because of the change to the new system or were false examination results input on those shipments.

The second point seems to deal with some confusion on the part of those testifying. ACCEPT was a precursor to the Cargo Selectivity Module of the Automated Commercial System (ACS). Historical data compiled in ACCEPT was included in ACS Cargo Selectivity. Once conversion to the new system was completed, ACCEPT files were no longer compiled. It may be true that selectivity criteria once in ACCEPT may not be in ACS Cargo Selectivity, but that is because the information was outdated by the ever-changing nature of importations, tariff classifications, and new trade laws. At the time of conversion, all ports and districts were instructed to provide all selectivity criteria contained in local systems to the national system for cargo selectivity.

Question: How is the decision made as to whether Customs will examine specific cargo? Who makes decision? On what basis?

Answer: Entries filed on commercial quantities of imported cargo are processed through the cargo selectivity module of The Automated Commercial System. This module contains the cumulative history of all enforcement criteria and commodity compliance requirements for importations to the United States. The collective information in this system is matched against import information provided by the importer/broker and with other enforcement modules in the system. The decision to examine cargo is derived from the matching of criteria to the data elements input into the system for a particular entry. The criteria, both enforcement and compliance is provided by Customs Inspectors, Import Specialists, agents, other Customs Officers, and members of other law enforcement agencies. The "who" of the question depends on the criteria that hit on the entry. Inspectors provide the Operational Analysis Staff's (functionally responsible for the cargo selectivity criteria) with information on high risk importers, shippers, and other data based on past examination records, current intelligence, and other enforcement data (TECS, FP&F, Moir's etc). Inspectional overrides of examination designations are also based on this same type of information. Import specialists input criteria on commodities and other elements usually based on trade laws and import requirements such as quotas, prohibitions, and other import sanctions. The decision to examine is based on the entry elements input into the system matching criteria placed into the selectivity modules by officers of the Customs Service or other agencies.

QUESTION: What role do Customs Inspectors play in the decision to examine specific cargo when that cargo is processed using Customs Automated *Commercial System?*

ANSWER: Local inspector input into the ACS Cargo Selectivity system has always been provided for, using the OAS unit as a conduit for this purpose. Inspectors provide OAS with information, through the use of examination results, penalty and seizure reports, as well as other enforcement reports, which pertain to the importer, commodity, foreign manufacturer, carrier, or special smuggling techniques used in cargo. Local OAS units can input this information into their local data bank, or, submit the information to The National OAS in New York for inclusion into the national criteria. Inspectors, import specialists, agents, and others in Customs have a vital role in helping the OAS units develop and maintain ACS Cargo selectivity. Program changes proposed for future implementation, as Customs moves towards greater "paperless" entry processing will allow greater flexibility in developing criteria. OAS units, in conjunction with inspectors will be able to set percentage levels for examining commercial shipments and in cooperation with The National OAS Office, override national criteria to meet the needs of the local area.

QUESTION: What provisions have been made, if any, for local Customs inspector input into the decision to release specific entries without intensive examination in a "paperless" environment? If there are none, why not?

ANSWER: Local inspector input into the ACS Cargo Selectivity system has always been provided for, using the OAS unit as a conduit for this purpose. Inspectors provide OAS with information, through the use of examination results and penalty and seizure reports, as well as other enforcement reports, as well as other intelligence sources. This information could pertain to the importer, commodity, foreign manufacturer, carrier, or special smuggling techniques used in commercial shipments. Local OAS units can input this information into their local data base or submit the information to OAS in New York for inclusion in the national criteria. Inspectors, import specialists, agents, and others in Customs have a vital role in helping the OAS units develop and maintain ACS Cargo selectivity criteria. Program changes proposed for future implementation, as Customs moves towards greater "paperless" entry processing will allow greater flexibility in developing criteria. OAS units, in conjunction with inspectors, will be able to set percentage levels for examining commercial shipments and in cooperation with New York OAS, override national criteria to meet the needs of the local area.

QUESTION: Please discuss Customs policies and procedures regarding overriding Automated Commercial System (ACS) cargo selectivity "decisions"? Are these policies and procedures uniform throughout Customs? If not, how do they differ from port to port? Why?

ANSWER: There are several Customs directives which provide instructions and guidelines for ACS entry processing and overriding cargo selectivity designations. These directives specify which entries will be processed and by whom, and give specific guidelines for the examination of cargo and overriding selectivity designations. A decision to override an entry examination designation can be made by an inspector but must be concurred in by the supervisor. Reasons for downgrading an exam designation of intensive to general must be input into the system. This allows the selectivity system to release the shipment and close out the entry portion of the processing. There are also codes input to describe the reason for such action. The override code also assists OAS analysts in reviewing the criteria to see if it needs to be modified, extended, or deleted. Upgrading a general exam designation also requires supervisory concurrence. These procedures are uniform throughout the Customs service.

What can vary from port to port is the reason for the override. Each port's history, workload conditions, and importer experience is different. Even with the directives applied, the reasons for overriding would depend on local knowledge and experience.

QUESTION: What percentage of all intensive examinations performed in FY 1987 were performed as a result of Automated Commercial System Cargo Selectivity? How many were performed as a result of a manual override from a general examination to an intensive examination? Please compare the rate of discrepancies found in each of these categories. Also, compare these rates to the rate of discrepancies found by intensive examinations performed as a result of random selection.

ANSWER: For FY 87, the figures on intensive examinations performed are as follows:

Total Intensives - 632,256 (16 percent of all entries)
1. Criteria - 369,439 (57.7 percent)
2. Random - 26,677 (4.2 percent)
3. First Time Importer - 166,197 (26.7 percent)
4. Overrides (General to Intensive) - 71,153 (11.2 percent)

For FY 1987, the percentage of discrepancies are:

1. Criteria - 56-59 percent
2. Randoms - less than 1 percent
3. First Time Importer - 10 Percent
4. Overrides (General to Intensive) - 25-30 percent

The use of the term "generals" when referring to overrides may be misleading because there are no figures which indicate how many of those entries were general with document review ACS criteria or were clean generals, i.e., no criteria.

As inspectors continue to find discrepancies and input that information into the data base, the need for overrides will diminish. Additionally, ACS program changes are under study which will allow inspectors to vary random selections according to local situations and risks. This will greatly improve the success of random selections.

Q: In response to questions raised in earlier letters regarding cargo examination, you claim that Customs finds a "discrepancy" in better than 50 percent of the cases where the decision to examine the cargo was based on an Automated Commercial System "selection criteria". You also supplied this Subcommittee with the history of examinations and discrepancies for three specific importers who testified before this Subcommittee on June 9, 1988: Fingerhut Corporation; RSK Industries; and, Latex Gloves, Inc. In those three cases, the alleged discrepancy rate was 1.6 percent, 6.1 percent and 3.8 percent respectively. In the RSK case, your ACS records show that out of 1,061 entries Customs performed 126 cargo examinations and found only two alleged discrepancies. In the Latex Gloves case, Customs performed 49 cargo examinations and only three alleged discrepancies were found out of 391 entries. Finally, in the Fingerhut case, out of the 13,269 entries Customs performed 1,957 cargo examinations and found only 76 alleged discrepancies. In other words, in these three cases, 2,474 cargo examinations were performed, almost all of which were initiated as a result of selection criteria, and only 81 alleged discrepancies were found for a "discrepancy rate" of only 3.2 percent. Why would Customs continue to scrutinize these importers' cargo when the rate of discrepancies in their cases is so much lower than the average?

A: Customs did not intend to make the claim that our examinations produced violations of 50 percent. It appears that we misinterpreted the original question and provided the percentage of violations resulting from criteria rather than the percentage of examinations resulting in violations. The statement that was made was that of ALL VIOLATIONS FOUND, CRITERIA WAS RESPONSIBLE FOR ABOUT 50 PERCENT OF THE VIOLATIONS. Overall, of all entries processed through ACS, approximately 16 percent are designed for examination and from that universe, approximately 4 percent result in a violation. The determination that a particular commodity or importer requires a more intensive examination is not based solely on numbers of importations versus examinations versus violations. There are trade sensitive reasons that require verification of specifications on a particular shipment or series of shipments, or trade laws that require an examination, which are beyond the control of Customs. Additionally, regardless of the number of violations, their severity must be taken into account. The numbers you quote for Fingerhut fairly match the national average for a high volume importer; about 14 percent of their shipments examined with a 3.8 percent violation rate. The overall violation rate based on 2474 examinations with 81 violations is only slightly less than the national average. In the attached criteria on Fingerhut, there are seven seizures for various trademark and quota violations, four in 1987. Additionally, there are several overweight textile shipments which were not seized but noted. Under normal circumstances, this would qualify Fingerhut as being a high risk importer. There is also criteria based on the commodities which any importer of those would have examined for compliance reasons. The other examples given also represent trade compliance examinations, based on criteria in the system on the commodity. The possibility of lowering the examination rate using percentage criteria is now an additional tool that OAS units now have available to them.

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SSDI                                                    CRITERIA RECORD FOUND
                         CARGO SELECTIVITY CRITERIA   LOCAL FILE

DIST-PORT: 9900          CURRENT DATE: 083188                 CAR/SUM (C/S): C
         TSUSA            65337_____         FILER     ___
         COUNTRY          ____
         IMPORTER         41-094977700_____________________
         MANUFACTURER     _____________

   REMARKS    ENF:T/C: FINGERHUT -- SZ FOR INFRINGING ON COPYRIGHT -- HANGING
RAIN LIGHTS.  SZ# 86300100078

    REFERRED BY MINNEAPOLIS-OAS                          NY-OAS DELETE  9-30-88

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  LAST UPDATE WAS CHANGE    ON 04/06/88    AT 2FQ     BY 333549900

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         COUNTRY          ____
         IMPORTER         41-094977700_____________________
         MANUFACTURER     THSINWEA2665SAM

   REMARKS    ENF/Q/V: IMPORTER "FINGERHUT" UNDER NEW VISA-OVERWEIGHT GUIDE-
LINES FINGERHUT HAS HAD ONE SHIPMENT FROM SINTHAVEE WEAVING, BANGKOK, THAILAND
CONFIRMED BY LAB REPORT TO BE 5.6% OVER VISA WEIGHT, 3-7-88.
SOURCE: SEA/OAS/EGD            NY/OAS/JD              DELETE DATE 122888

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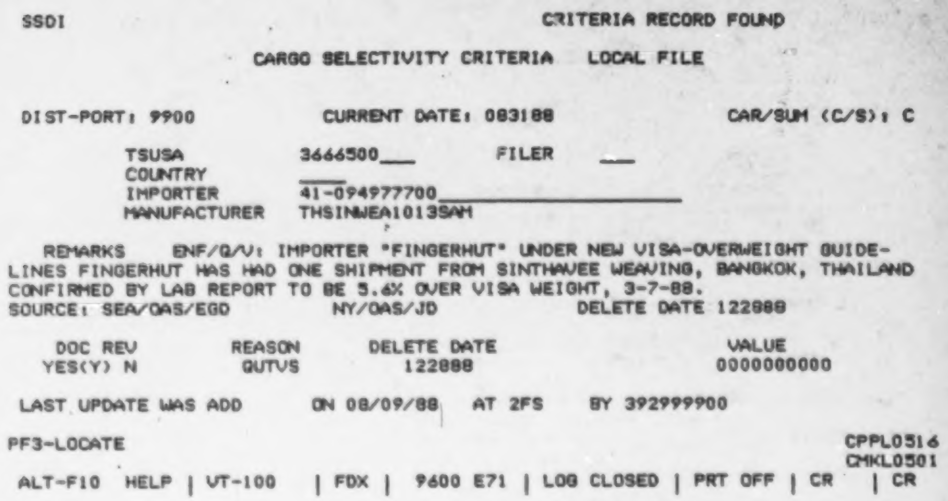

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                     CARGO SELECTIVITY CRITERIA   LOCAL FILE

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        COUNTRY          ___
        IMPORTER         41-094977700____________________
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   REMARKS    ENF/Q/V: IMPORTER "FINGERHUT" UNDER NEW VISA-OVERWEIGHT GUIDE-
LINES FINGERHUT HAS HAD ONE SHIPMENT FROM SINTHAVEE WEAVING, BANGKOK, THAILAND
CONFIRMED BY LAB REPORT TO BE 5.6% OVER VISA WEIGHT, 3-7-88.
SOURCE: SEA/OAS/EGD         NY/OAS/JD          DELETE DATE 122888

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 LAST UPDATE WAS ADD      ON 08/09/88   AT 2FS    BY 392999900

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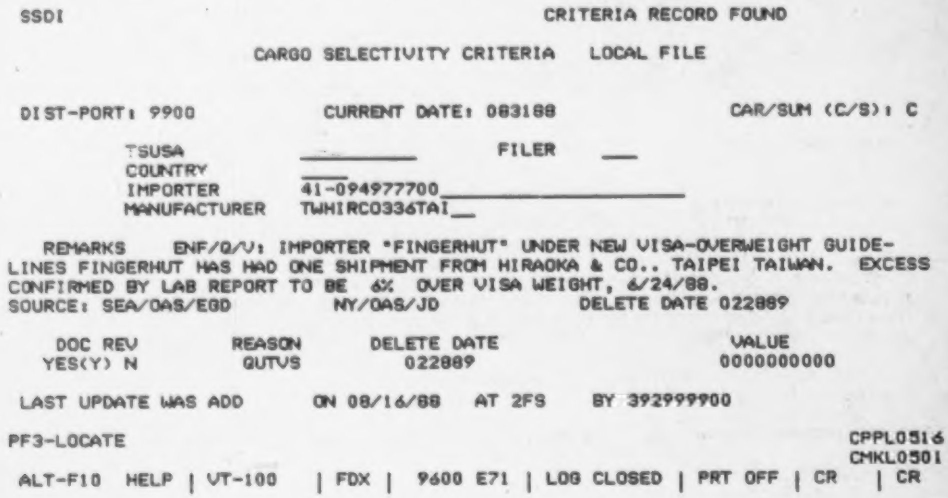

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        TSUSA            __________        FILER     __
        COUNTRY          ___
        IMPORTER         41-094977700____________________
        MANUFACTURER     TWHIRCO336TAI__

   REMARKS    ENF/Q/V: IMPORTER "FINGERHUT" UNDER NEW VISA-OVERWEIGHT GUIDE-
LINES FINGERHUT HAS HAD ONE SHIPMENT FROM HIRAOKA & CO.. TAIPEI TAIWAN.  EXCESS
CONFIRMED BY LAB REPORT TO BE  6%  OVER VISA WEIGHT, 6/24/88.
SOURCE: SEA/OAS/EGD         NY/OAS/JD          DELETE DATE 022889

    DOC REV         REASON      DELETE DATE                  VALUE
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 LAST UPDATE WAS ADD      ON 08/16/88   AT 2FS    BY 392999900

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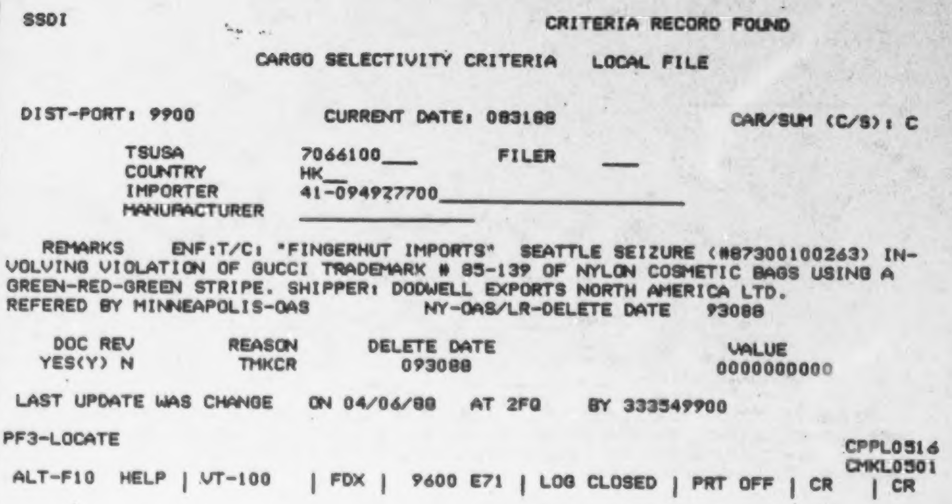

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SSDI                                                  CRITERIA RECORD FOUND

                         CARGO SELECTIVITY CRITERIA   LOCAL FILE

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          TSUSA          7066100___       FILER     ___
          COUNTRY        HK__
          IMPORTER       41-094927700_______________________
          MANUFACTURER   _______________

   REMARKS    ENF:T/C: "FINGERHUT IMPORTS"  SEATTLE SEIZURE (#87300100263) IN-
VOLVING VIOLATION OF GUCCI TRADEMARK # 85-139 OF NYLON COSMETIC BAGS USING A
GREEN-RED-GREEN STRIPE. SHIPPER: DODWELL EXPORTS NORTH AMERICA LTD.
REFERED BY MINNEAPOLIS-OAS          NY-OAS/LR-DELETE DATE   93088

    DOC REV         REASON       DELETE DATE                      VALUE
   YES(Y) N         TMKCR          093088                       0000000000

 LAST UPDATE WAS CHANGE   ON 04/06/88   AT 2FQ    BY 333549900

PF3-LOCATE
                                                                      CPPL0516
                                                                      CMKL0501
 ALT-F10  HELP | VT-100   | FDX |  9600 E71 | LOG CLOSED | PRT OFF | CR   | CR
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FINGERHUT

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SSDI
                                                      CRITERIA RECORD FOUND
                                CARGO SELECTIVITY CRITERIA   LOCAL FILE

 DIST-PORT: 9900             CURRENT DATE: 083188                 CAR/SUM (C/S): C
          TSUSA              70641_____          FILER      ___
          COUNTRY            KR__
          IMPORTER           41-094977700______________________
          MANUFACTURER       ________________

   REMARKS    ENF:T/C: FINGERHUT -- SZS OF PURSES, LUGGAGE, AND HANDBAGS FOUND
OVER VISAED WEIGHT. SZ#S 85350100083,-00084; 87350100003,-00006,-00059.
       *** EXAMINE FOR POSSIBLE VISA OVERWEIGHT VIOLATIONS ***
 REFERRED BY MINNEAPOLIS-OAS                               NY-OAS DELETE  9-30-88

    DOC REV          REASON       DELETE DATE
  YES(Y) N           QUTVS          093088                         VALUE
                                                                   0000000000

 LAST UPDATE WAS CHANGE   ON 04/06/88   AT 2FQ    BY 333549900

PF3-LOCATE
                                                                         CPPL0316
 ALT-F10  HELP | VT-100   | FDX |  9600 E71 | LOG CLOSED | PRT OFF | CR  CMKL0501
                                                                          | CR
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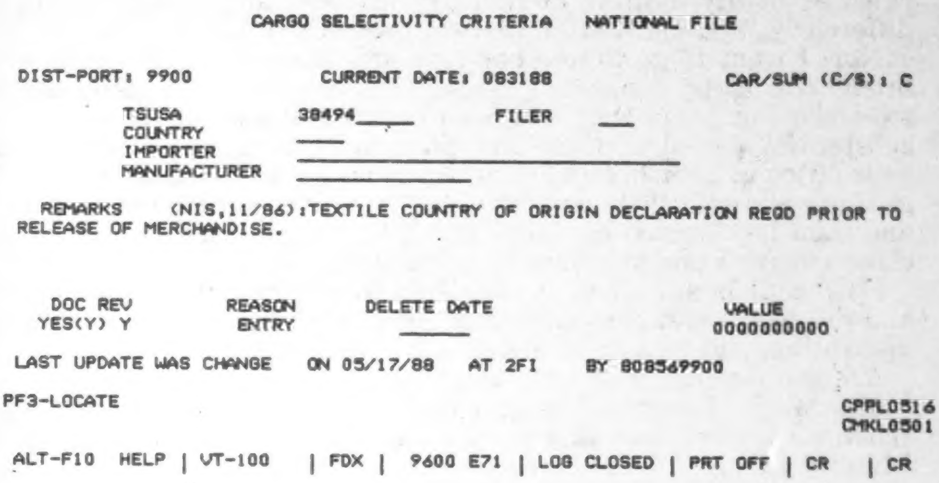
Example of Criteria based
on TSUSA #; standard
importation by Fingerhut.



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                    CARGO SELECTIVITY CRITERIA   NATIONAL FILE

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          TSUSA          38494_____        FILER     __
          COUNTRY        ____
          IMPORTER       _________________________________
          MANUFACTURER   _______________

  REMARKS    (NIS,11/86):TEXTILE COUNTRY OF ORIGIN DECLARATION REQD PRIOR TO
RELEASE OF MERCHANDISE.


   DOC REV         REASON      DELETE DATE                        VALUE
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LAST UPDATE WAS CHANGE   ON 05/17/88   AT 2FI    BY 808569900

PF3-LOCATE                                                            CPPL0516
                                                                      CMKL0501

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Chairman PICKLE. Commissioner, let me proceed as quickly as we can and hope that we might wind this up unless other Members come back with additional questions.

I want to proceed with some of the procedures and rulings and statements you made so that the trade community can better understand what to expect. I am going to go back. When I yielded my time previously, we were talking about opera sets which you had ruled as utility matters or industry matters, and would tax them differently. You did it after years of previous ruling.

Now I want to go to another case and that was a case that was brought to us by Fingerhut again. This case involved shipment of sweaters. For years they had been bringing these sweaters in for a substantial period of time and they went to a representative in your office in Seattle and got an informal advice from your importer there and said they were bringing it in as sweaters and they did, and then he changed his mind and said, "No, we are going to seize these sweaters and you have to bring them all in."

Fingerhut heard about it and tried to stop that kind of reversal and did locate the person in your office who had given that informal ruling, and he agreed to bring it in as sweaters.

Are you familiar with that case?

Mr. MACH. I would like to explain the advisory classification. When an import specialist gives a classification on a sweater, it is advisory only and if the importer wants a binding ruling, there are procedures in place which we are going to expand in the next few months.

That importer can come to Customs and request that binding ruling. When an import specialist or Customs officer says, "I think the sweater is this," he is just getting an advisory classification. It can change. If he wants to hold the government bound, there are procedures where an individual can do that.

Chairman PICKLE. When a shipper or importer or businessman comes and says, "I want to bring in this sweater; is it a sweater? Do I have it classified right?" And your people say, "Yes, that is correct," and they ask for what you call informal advice. Are you telling me that you accept that at your peril as a shipper, that it doesn't mean anything?

Mr. VON RAAB. All businesses that have any level of sophistication in dealing in international trade never rely on that. They always get a binding ruling.

I am amazed at Fingerhut's business practices. They seem to be running their company on the basis of informal telephone conversations instead of appropriate rulings. I hope that they don't have much of their business relying on this because it is incredible; it is amazing. I never could imagine that a company this size would conduct itself in this way.

Chairman PICKLE. Mr. Commissioner, similarly I would say to you that I am amazed that this many companies, not just Fingerhut, are coming in complaining about procedures, notices, rulings and lack of rulings that we are getting. It is not just Fingerhut. I am glad they did come in. We are getting a lot more complaints throughout the country from the offices affected.

In Fingerhut's case, they have come to you and in the first case mentioned, they asked, is it all right. They assumed it was because the classification had been the same. In this case they asked for an informal ruling. I don't know what else they can do but to go to you.

You say that doesn't mean anything at all. Are you saying that doesn't mean anything then?

Mr. VON RAAB. That is correct. Mr. Chairman——

Chairman PICKLE. When shippers come to you importers and say, "We want to bring in this item, is this the right classification," and your people say, "Yes," that doesn't mean anything?

Mr. LANE. We are very much aware that there are a number of complaints in this regard. The Customs Service is very concerned about it, the Commissioner has been, the deputy secretary has been.

We have now come up with a program that Gene Mach outlined that talks about a binding ruling that will be binding on the Customs Service at entry and liquidation in that district and nationwide. That binding ruling will be given within 30 days.

Through that process, the 30-day national binding ruling, we think we will correct these problems of nonuniformity and the complaints of the importer.

Chairman PICKLE. I will come to that point in a minute. We hope you will get a decision on it. You have not done it in dozens of cases.

Mr. LANE. This will be effective the 1st of January.

Chairman PICKLE. You outlined a series of new procedures that I hope is going to be an improvement of it. I am not trying to pass judgment on all that has happened. I am saying to you that here is an importer who comes to you and says, "Is this the right classification," and your people say, "Yes," and you tell me, "Sorry, that doesn't mean anything so I will give you this informal opinion."

Another case which goes a step further, here is Procter & Gamble. They wanted to import some topping packages for Duncan Heinz muffin mix and they wanted to bring it in under a category that wouldn't be subject to quotas, that is to the sugar quota but they wanted to be sure, they thought that was correct, but to be positive, they called a representative in your Lake Champlain office and said, "Is this correct," and your office said, "Yes, you can bring it in." It would not be subject to the sugar quota.

So you did that and once they began to do it, you reversed and said, "No, we are not going to do that; it is under the sugar quota." And P&G had to protect it and try to keep from being seized. They didn't get a binding ruling; they didn't have time, because muffins cook so long and they had to get a topping on it. They didn't get a binding ruling. You reversed them on that.

I don't know how long it took, but 2 or 3 months later they got the shipments released at much expense. Are you familiar with that case?

Mr. LANE. No, sir, we are not familiar with that case.

Chairman PICKLE. Are any of you here?

Mr. LANE. I asked, but no one on the panel is familiar with that case.

Chairman PICKLE. Commissioner.

Mr. VON RAAB. We looked through our records that we received. It is not in any of the testimony that we saw which was given before this committee. Apparently we have not received that case. I don't know what to say.

Chairman PICKLE. Let me ask the staff. Was this set of circumstances given to the commission before we came? I understand that that case was brought out at one of our first hearings as an example of the inconvenience and expense.

This particular case cost Procter & Gamble over $200,000.

Mr. VON RAAB. Then our staff failed to uncover that and for that, I apologize, but I did ask them to review all the cases.

Chairman PICKLE. Let's assume that the facts are essentially as I have stated. The fact is, they did try to get a ruling, they did go to your office and then you reversed it and after considerable delay, Procter & Gamble said it cost them about $200,000.

If you can give us an additional statement on that in furtherance of the allegation or statement of facts I have made, we would appreciate it.

I want to go a step further on these rulings. You say they ought to get a binding ruling, then you don't have to take anybody for their word. Now, the question is, can they get a binding ruling? You tell me you are going to have a new procedure, to get a binding ruling within the first 30 days. I hope that is so.

Let me give you a case, a matter that involves the Linmark Marketing Services Limited. They requested a binding ruling with regard to the classification of paper jute luggage and you have got the style number and the case and so forth. The importer noted this luggage was a new item and they wanted to get a ruling on it so they came to you for a ruling. Are you familiar with that request?

Mr. VON RAAB. No.

Chairman PICKLE. Well, let me refresh you. A letter dated July 21, 1987, was sent by the firm to the regional commissioner of New York along with a sample of the luggage. Your New York man may want to comment. Is he here? Did you get that letter?

Mr. KWAS. I must have. I have got 5,000 from last year. I don't have any individual knowledge of the letter right here, but I am sure we got the letter.

Chairman PICKLE. Was this particular case submitted to Customs? It was in the original statement that appeared before this committee, so we didn't dream it up.

I am surprised that you don't know about it, that you have a blank memory on that particular case. An acknowledgment of receipt of the letter was received by the vendor so you, Mr. Regional Commissioner, someone said, "I got your request and I will give you a decision on that." That was July 21, 1987.

So I got to say to you now that no binding decision has been made as of now. Do you agree or disagree?

Mr. KWAS. I don't have any knowledge either way at this point, Mr. Chairman.

Chairman PICKLE. The fact is, they don't have acknowledgment of it. They requested it over a year ago. So when you tell me that you can't rely on what I tell you, only when it gives you a binding ruling, then it leaves the importer disturbed on what he can do.

Mr. KWAS. Ninety-five percent of the binding rules requested at out New York office are turned around in 34 days. I am not saying this one didn't fall through the cracks. I have no knowledge of the particular instance.

Chairman Pickle. Your testimony, Mr. Commissioner, you said that I think 80 percent of them, or there about were ruled within the first 90 days or something like that.

Mr. Lane. The headquarter's rulings. The more complicated rulings of headquarters approximately 79 percent come out within 90 days.

Chairman Pickle. Well, as I recall it, your statistics which you have given us show that about 2,536 rulings were completed in the first 6 months of 1987. That would mean you already ruled on about 5,000 cases completed. But if you didn't complete 21 percent of the, that means over 1,000 binding rulings had not been decided. That is my figure, is that correct?

Mr. Lane. Well, sir, at headquarters, if the national import specialist determines that it is a particularly complex case, or the importer's attorney is aware this is a particularly difficult case, it comes to headquarters. The expectation at that point is that it is going to take more than 30 days. Although I think something like 59 percent of them, even at headquarters, are done within the first 30 days.

Chairman Pickle. Well, I am sure a large number of them are, but if you have a procedure now where 21 percent or in any given year like last year, 1,000 were not ruled on, then I would say that is an alarming figure.

Now, I don't know what can be said about this particular case with such a complicated case. It wasn't a new piece of luggage, a little bit different fiber to it, but I don't know what would be so complex. Luggage or not luggage. I don't know why it would take a year to get a ruling.

Mr. Lane. Sounds like maybe it got lost in the mail. We will track that one down, Congressman. I don't know what happened there. As for the backlog at headquarters on the ruling, we have a team together working on that. We are concerned about that, too.

Chairman Pickle. I am concerned that in spite of the fact that here is a company trying to bring in an item, trying to know what it's classified and they ask for a binding ruling and it is swallowed up in the procedure. If you are not familiar with it, I gain nothing by keeping on hammering on it. If you don't know anything about it, if you don't, he made a written request, you acknowledge his letter and then no response.

So I think I would ask you to look into that case.

Mr. Kwas. We can give a complete report.

Chairman Pickle. If there are any other cases like that in any given year, that is that large—we hope that with your new procedure you can make those determinations, but when you tell me that the best thing for you to do is get a binding ruling and you can't get it out of you, you can't even squeeze it out of you in some cases, then what can an importer expect?

Mr. Lane. Sir, I think that is the very, very rare exception.

Chairman Pickle. Let's hope it is. Let's hope it is. But here is testimony by an importer and here is the factual case that we had received testimony that when brought to your attention and you say you don't know anything about it. So look into it and, if you have got a plausible answer to it, we would like to receive it.

Mr. LANE. Yes, sir.

Chairman PICKLE. That is the main thing. Before I go on to this, let me ask Mr. Shaw if he has any questions he wants to proceed with.

Mr. SHAW. Thank you, Mr. Chairman. I would like to join the other members in welcoming the Commissioner to the subcommittee. This is a new hat that I am wearing, but the Commissioner—

Mr. VON RAAB. Good to see you, I hope.

Mr. SHAW. You have a friend up here, Commissioner. I would like to talk to you for a few moments about zero tolerance and the drug bill that passed the House.

You may be aware I offered an amendment that would have struck the provision in the drug bill that made a substantial change of the law, regarding the innocent owner exception. In doing that, what the House of Representatives did was change 200 years of law. From talking to particular people from the Coast Guard and a few people from your department at Customs, it appears that what we may have done is make it almost impossible to seize vessels when the owner is not aboard.

Would you care to comment on that?

Mr. VON RAAB. Yes. I don't have the language of the House bill before me, but I am aware of what it attempts to do.

Mr. SHAW. What it attempts to do is fine, but what it does, I think, is far beyond that.

Mr. VON RAAB. What it effectively does. There is legitimate concern among Members of the public that innocent owners of vessels, cars, planes, not lose their cars or planes because of something that is not under their control and for which they are not responsible.

And what we face is a situation in which the Customs Service and the Coast Guard would lose their ability to seize cars and planes under reasonable circumstances because of the provisions of the House bill, thereby effectively removing from the Customs Service and the Coast Guard their tools to deal with drug smugglers and so the House bill, as it has been put forward, would have a disastrous impact on drug enforcement, would in effect role back what is 200 years of law enforcement practices, and would provide the United States with the weakest laws against drug smugglers of any country of which I am aware.

I can't speak to every country, but I recently came from the Caribbean law meeting of a number of small islands down there. I happened to discuss this with them and even they were amazed that the strongest government in the world, the one that pretends to be most concerned about drug smuggling would even think about a provision that would deprive its law enforcement authorities of the ability to deal with drug smugglers the way that provision does.

Mr. SHAW. Would you care to comment on the other portion of the bill, which I did support, which would streamline the procedure by which an innocent owner could indeed retrieve possession of his vessel?

Mr. VON RAAB. As I am—the administration found that to be an acceptable way of dealing with the innocent owner problem, as opposed to the provisions this Congressmen Studds and Young put forth, which is I wish I can think of a word that is stronger than unacceptable, I guess disastrous.

Mr. **Shaw**. I like the use of that word. I wish I had thought of that example, particularly among other countries in comparing the law that was put forth in that so-called compromise. I believe it is exactly as you said, disastrous and it is going to, in effect, assure that the so-called innocent owner who is not so innocent but just wasn't caught aboard will avoid a lengthy detention. We will find that his vessel goes right back in the drug trade without any real substantial delay.

Mr. **von Raab**. There is some question as to whether people can disavow ownership of a suitcase under that law, if one knows how far it would be pushed.

Mr. **Shaw**. That is interesting.

Mr. **von Raab**. You know, it is one thing to claim you didn't know what was on your boat or plane, but it is a possibility under that law that people can claim they didn't know what was in their suitcase.

Mr. **Shaw**. I believe the provision, though, provides for conveyances, but——

Mr. **von Raab**. Right, but the other problem is it doesn't limit the amount of drugs, so that this could also apply to tons of cocaine that someone could then claim they didn't know about. So, I mean, it not only provides relief for the kind of small-time drug trafficker, but it provides relief for the boys in the Medellin cartel as well. It's a monstrous proposal.

Mr. **Shaw**. I think the only thing that will assure is that the owners of the vessels will swap vessels for those particular purposes so they won't be aboard and be caught. There was a great deal of publicity and it wasn't very fairly handled, where a vessel was seized. I think this almost follows the same pattern that we are seeing as far as the airlines are concerned. You get the big headlines that Eastern Airlines is fined so many millions or you will see that a certain vessel is fined so many millions of dollars or seized because of small amounts of drugs on board.

The followup story which never gets really any headlines is that the owner may be fined $1,000 and given his $2 million yacht back. What are we doing, though, and I think one of the areas where we can, and I think must accept some reasonable criticism, is that in some instances we are not expediting the review procedure. The review process should go forward after the seizure is made so that a determination can be made quickly. That is, bring it to an end or bring it to a head. They should decide promptly whether they are going to enforce the seizure or offer a small fine or significant fine and return the vessel.

What are you doing in-house in order to try to expedite that procedure? I think that is part of the bad press we have been getting.

Mr. **von Raab**. As an example, there was a big press coverage of an alleged seizure by the Customs Service of Wood's Hole oceanographic ship in California. What happened was that the Customs office found drugs on board, notified the owners of the vessel, informed them that it was quote, "seized", although we were able to use their boat. It didn't effect their operation of the boat at all.

What it did was enable the owner of the boat to crack down on his crew, gave him a good tool.

In that case it is a good example of where this is very useful to the owner. What we are trying to do to improve the situation is we actually have appointed an individual in Customs by the name of Janet LaBooda, who is the so-called ombudsman with whom all people who have had their boats or cars or planes, can deal directly to get relief, if that is the case.

So what we have is a tremendously expedited proceeding directly at headquarters and she reports actually to me on this matter because we want to make sure the program is carefully handled. We have begun to automate our process which will bring this information more quickly through the system.

There are a number of procedures we are putting into place, in addition to which we have refined our criteria. We know much more quickly now when a boat will be kept or released, whereas earlier on in the program, there were a lot of gray areas that we hadn't really looked over very completely.

So I think you will find that the way the program is conducted at present would no doubt conform to the kinds of proposals that you were thinking of putting forward, because they are a good idea.

Mr. SHAW. Very good. The Woodstock situation, is that the correct name?

Mr. VON RAAB. Wood's Hole.

Mr. SHAW. That was used by one of the Merchant Marine and Fisheries members as an example of abuse by the Government in its zero tolerance. I, with a great deal of glee, was able to produce a letter to you thanking you for the expeditious and courteous way in which you handled the situation. The letter also indicated or at least inferred that the president of Wood's Hole's supported zero tolerance.

Mr. VON RAAB. Absolutely.

Mr. SHAW. The members, I believe, aren't getting the full story on that because of the abbreviated debate which we had on that particular issue. I believe it was a shame. I don't believe they were really apprised of what they did by putting that in there.

Hopefully, the Senate will clean it up, if indeed the Senate produces a drug bill which looks rather remote at this time.

Thank you, Mr. Chairman. I yield back.

Chairman PICKLE. I thank you, Mr. Shaw. One or two other questions here, Commissioner. In the Budget Reconciliation Act of 1987, Treasury had asked—we established a Customs commercial operations and advisory committee, and asked that that be appointed so people would have an official committee to ask if they can get through a committee and kind of give advice to counsel to the committee. Have those members been appointed?

Mr. VON RAAB. I believe that I either—either in the law or the way the Department of Treasury is administering it, that committee is being formed by the Assistant Secretary of Treasury for the purposes that were stated in the law. My understanding is that the committee members have been identified and a background investigation has been undertaken at their permission, and that the committee itself should be announced shortly. I don't know exactly when.

Chairman PICKLE. Well, I was going to ask you when do you think those appointments will be announced? You don't know?

Mr. VON RAAB. I would guess that within a month. But I would——

Chairman PICKLE. This act was passed a year ago, a full year before an advisory committee can even be named. Why has there been such a delay?

Mr. VON RAAB. I would like to be able to defend my colleagues at the Department of Treasury, but I don't know the reason.

Chairman PICKLE. Well, if anybody from the Treasury is here, they were here earlier this morning. I would be glad to hear your statement. I am just concerned that we created this advisory committee so the trade and business and commercial interests could advise Customs.

We think these types of procedures would probably be good for Treasury to follow.

Mr. LANE. Sir, I think I can add something. The Assistant Secretary, Keating, who was our boss, was to chair that committee. He transferred over to Justice and he had been working on it and for a long time he was absent and vacant. As soon as the new Assistant Secretary came in, the Secretary of Treasury was—there was a transition period there, and I think Mr. Baker was about to make the appointment when he realized he was resigning and a new secretary was coming in.

So those changes have been going on over the past year. I think that is why it has fallen down.

Chairman PICKLE. Well, Mr. Lane, just looking at the fact that Congress created this commission over a year ago and to date there hasn't been even an advisory committee appointed, even though there have been a lot of changes really doesn't justify the fact that there is no advisory committee.

Let's assume that one will be appointed because it is the law. I don't know why they would drag their feet for 1 year on it. I was going to assume that you have asked that it be appointed. I don't know whether you have expressed——

Mr. LANE. We work with Treasury on helping them select the members. They are working on it very diligently.

Chairman PICKLE. No matter what procedure you followed, it has been a year and produced nothing. If we had the committee and it will be appointed I am sure, now, what if it is a committee, do you think that advisory committee could help importers to get some kind of a hearing on a given procedure and that committee in turn could counsel with Customs to say you ought to change procedures?

For instance, in the red ball seal case, do you suppose the advisory committee could consider that on the textile case, textile weigh-in case? I am giving an example. Would the committee have a chance to look at that type of thing that is relatively, you say relatively new, give you some opinion, would that be helpful to you?

Mr. VON RAAB. It is another group with whom we would consult and who would give us advice, but we spent a lot of time right now. I mean, I was with the brokers yesterday. I meet on a regular basis with all kinds of associations.

Chairman PICKLE. I take it to say that is another group you would have to foul up you would just as soon not have to put up with. You can't say that. Another group you have to listen to that is in existence. I am not going to ask you to comment on that.

That is not your——

Mr. LANE. I think that is quite true, Congressman.

Chairman PICKLE. But at least you must have that attitude, you and Treasury because you haven't done anything about it in over a year.

Mr. LANE. We have worked with Treasury on it. I think it is a transition problem. I know the new Assistant Secretary is taking it very seriously. We are looking forward to working with that commercial advisory committee.

Chairman PICKLE. Now, let me by way of kind of review make some certain analyses. I understand you are not going to agree with all this, but I am trying to look at it now overall. If you can respond, if you want. My concern, a lot of my concern is what kind of procedures, what kind of rulings, what kind of regulations can we establish to move goods in and out?

Not concentrated on the drug interdiction, not that it is not part of Customs and your operation because you have to spend a lot of time on it. But we are trying to concentrate more on trade, shipments of goods, procedure.

This morning I have tired to pick out some illustrations. Let me review them now as a matter of—from my.

I gave an illustration that would be—unilateral proposal such as the Red Ball Seal Program. You ordering that the Red Ball Seal Program be put in without checking with the industry? You tell me that this is an old procedure. We didn't really have to put out a new directive. It really wasn't nothing new.

But you put it out and the shippers, importers began to scream because they were hurt and all across the land, these containers stacked up, so much so that you finally said we will give it a little more time and then you change it over to a new procedure.

It would seem to me that before you put into effect one of those kinds of things, you ought to have a chance to check with the trade community first. On the weighing program, you say that you have to use that as an approach and that is true.

It may well be, but you don't have any rules or regulations about how you are going to implement it. We have asked you to give us a written statement about how you are going to put these in the field, this program in effect, particularly out in the field. And you have not given that to us and you haven't given that information.

Now it seems to me that in there is a case where we can have some real improvement. I gave some illustrations of what I call the inpredictability of customer's treatment of tariff classification.

First the Fingerhut Sewing Kit. Now, Fingerhut had a sewing kit that was classified as a sewing kit and what they thought it was and they put it out. They didn't get a ruling. As I said earlier, they sought a ruling.

I don't know that they did. Commissioner, I think you are correct, but at least they used the ruling that you, Customs, has said all along, and you changed your procedure and said, nope, this is now luggage.

I don't know how, but some how that abrupt change ought not to be. In the opera field, you changed the classification of art work to industry. You have taxed all these opera companies throughout the land, without notice of any change. I know that the opera here has been hurt and hurt bad as true all across the country.

I don't know whether your Custom man is correct or not correct from a strict rule or regulation standpoint. But I do know that without any kind of warning to them, we have changed that classification and those people have been hurt because they didn't know how to handle it and they are still hurting.

In the area of the Fingerhut sweater jacket, they sought timely informal advice from Customs on the proper classification. They went to them to get an opinion, and it just happened and you gave them an opinion. It just so happened they would locate the person who happened to be on vacation and gave them that ruling. And you reversed it. Here they came to an advisory opinion and you say that doesn't matter.

You have to see it in writing. In the case of Procter & Gamble, here is where P&G sought informal advise from Customs and got an answer. That is the topping which was not subject to the sugar quota. And after you cleared several shipments of the toppings and the material was sent to the plant, Custom changed its mind.

P&G said that cost us $200,000. I don't know whether that is an accurate figure. You say you are not familiar with that case. I am telling you that the case and all these other cases I mentioned have been in the testimony before this committee.

In many cases we have passed that information on to you. And the Linmark Paper Luggage case, Linmark, the manufacturing company, requested a clarification from Customs on the proper classification. They want to know why would you classify this as luggage. They did that in June 1987 and they haven't heard anything from you yet.

Now, assuming that some of this is unusual and we have only highlighted the exceptional cases and that in turn you handle most of the cases properly, I am concerned in many instances importers simply don't know how to follow through on the shipment of their goods.

I think that they want to comply with your rules. The last thing they would want is to have their goods sitting on the dock or tied up somewhere. That is costing them money. They can't make sales. They would go out of business if that happened for any length of time. Sometime a week or two or three makes all the difference in the world whether they make a profit and loss or can be put out of business.

Now, it seems to me that in these kinds of cases that Customs Service is making it very difficult, very hard for people to follow through or to follow the rules when they don't know what the rules are and can't get an opinion from you in many instances.

Written questions have been made of it. Now, I don't see how Customs can defend those types of inactions or failure to act. The committee has mentioned these cases to you because there are instances of proven factual situations given to our committee, or in most cases where we have gone out and talked to them personally about it.

The importers are not "mad" at Customs and they recognize that when they say something, they tell us privately, they are fearful that the heavy hammer of retribution or whatever you call it will fall on them. Whether that is true or not, I don't know, and I am not making any accusations. I am saying to you they are concerned, and they want to find a better way to carry out the obligations of the trusted office.

At the beginning I said I thought you were doing a good job. I think you are a good strong agency, and I will admit that in running a Customs office, it is not like conducting a Sunday School class. You can't wear gum-toed shoes. But neither, Mr. Commissioner, can you put on shoes with steel spikes and just step and jump on anybody that you don't like or if they don't suite your liking.

I would hope that the interest is on procedures and that it would be improved as far-reaching in the category of trade as you have tried to make it in the field of drug interdiction. I am impressed with what you have done in drug interdiction because you have given us figures to show that in one area you are doing the very best job you can under very difficult circumstances.

I don't know how to evaluate that. You tell me all the pounds of cocaine you have caught and I am told also that unofficially that that doesn't represent 5 percent of the cocaine or the drugs being shipped into this country. If that is an incorrect estimate, you can correct me, but I am just taking a round figure.

Mr. von Raab. That is not correct. It is higher than that. It is higher than that.

Chairman Pickle. It is higher than that. Whatever it is. We have tired to find out and I guess it is just a guess because nobody knows exactly what it is. I guess your figure would be as good as mine. But I think in your pursuit now of how you improve and how you go forward in the field of Customs that you give considerable attention to improving your procedures in the trade and the commercial and business field. I think that is needed.

I will repeat again I am glad I am not out there in the field making judgments on a lot of these shipments coming in because everybody wants their shipment the day before yesterday, and you, in this case, have accommodated some of them, allowing them to put their people inside the facility and they have their own inspection and their own representative. And you push some of the goods through and if you don't inspect some shipments, whether textiles or whatever it is, you can let a lot of drugs come in and we don't want that.

So I am going to hasten to say again that you have got a tough job. But in the process I would hope that you take a more conciliatory attitude about how you improve your relationship in the trade and business field, as you go forward.

That is—that concludes my general statements. If you have anything that you want to add or comment about, my overall statement I will certainly be glad to recognize you.

Mr. von Raab. Thank you, Mr. Chairman.

This committee hearing has been a very useful exercise for the Customs Service. The announcement of this hearing set off probably one of the most far-reaching and intense examinations of the commercial activities of the Customs Service in the past eight years.

As a result of that examination, as a result of the information that your investigators turned up, the Customs Service probably knows more about how it operates and how well it operates than it has for a long time. For that, I thank you very much.

People don't appreciate how valuable a tool a congressional hearing is for the head of an agency. It is one of the few things that gets everyone's attention and causes them to take a good look at what they are doing. So it has been very useful to Customs.

As we undertook the examination, we attempted to begin to correct some of the shortcomings that became obvious to us, many of which everybody described by your members. I don't want in any way to leave you with the impression that we don't take the concerns that you have raised very seriously. In some cases I believe that some of the factual situations or patterns that everybody described perhaps could have been described more favorably towards Customs, but I don't think it is worth my while or the committee's to argue over these details.

I think the important facts are that the Customs Service must be aware of how it is viewed by the commercial world and must take actions to make sure that it is as less intrusive and as helpful as it can be and still meet its requirement to enforce and administer the tariff and trade laws.

We are embarked upon an effort to modernize Customs to use computers wherever possible. We do that not only because it benefits Customs, but because it benefits the business community. We have an expression we use in Customs, we want to do business the way business does business. We are trying to improve the process with which we advise importers on the conditions under which they bring goods into the United States.

Our rules procedure in the past has not been as expeditious as it should be and we have had too many cases in which Customs officers have given off the top of their heads opinions which have caused people to get into trouble. That is the fault of the Customs officer, but it is also the fault in my opinion of some of the business is who relied on something they shouldn't have.

Nevertheless, Customs has and will be establishing an expedited binding ruling procedure in which we are guaranteeing 30-day turn-around on binding rulings to those individuals who would receive them from Customs.

I am well aware of the concerns that had been raised by this committee about possible bad attitudes on the part of Customs officers. That is inappropriate and unacceptable conduct, and our training programs are designed to prevent that from happening.

It is a concern of the Department. I personally believe that it is under control, but I will not leave this committee without certainly checking into it again to ensure that the actions we are taking will address that issue. I can't let the opportunity pass without commenting once again on Mr. Anthony's questions regarding Operation 6,000.

Let me assure this committee that we will look carefully into that. The Custom Service prides itself on its integrity and objectivities. If we are mean, we try to be mean to everyone, not just one person or the other. So we will try to improve that general attitude, but we certainly do not want a situation in which one business benefits at the expense of another.

So in summary, Mr. Chairman, I thank you, and I compliment your investors on a very good job. Our Customs staff knows more about its business than it ever has, and I think we are going to be able to take this information and continue to do what I think has been a superb job but actually improve our performance in the years to come. Thank you very much.

Chairman PICKLE. Thank you, Commissioner. I think you have just made a corroborative statement and I appreciate that. The committee does, too. Let me conclude by saying that as I did in the beginning, we have not concluded these series of hearings. We had hoped that we might have made two or three other ports during these last few months and conditions just haven't permitted it.

We will in the next 2 years go and visit a lot of these places throughout the country. While we will make our report this year, it won't be one to close the book on what we have found, other than to summarize what we think our results of these particular series of hearings has been.

Next year we are going to look into the question of staffing, the amount of personnel you have, why is it you have refused or not accepted or didn't want additional personnel, to the extent that you have and you may want to argue that, but the appropriations committee said it is difficult to proceed when you stand by OMB and never ask for anymore personnel when obviously like in Red Ball Seal Program, you certainly need more inspectors, at least you didn't have enough.

We are going to look into the facility location and the question of people who are big enough and got enough money, and can put their own officials into these offices and we will give them a space. We can't give it to everybody, but they will have that facility location and we will get into examination selection and computer systems that generally you put so much emphasis on.

I think probably it is the right approach. I don't see how you can't go in that direction in this day and age and in this computerized world of ours. Somehow you have got to also allow the personal judgment of your Custom officials to be part of this program and at what level we don't know.

We are going to look into drawback questions and several other questions that have arisen. We are not concluding the hearings, other than to say that we will make our report and look forward to 2 more years of review of this. Did you want to add something, Mr. Shaw?

Mr. SHAW. Yes. To the list that you ticked off, one of the areas I think this committee should look into is the area of asset forfeiture, what is being done under RICO and the management of these assets.

Treasury has had some success.

Chairman PICKLE. We will look into that. Do any of you regional directors or officials have anything you want to add to it? All right. Thank you. Anybody else? We thank you for your cooperation and we appreciate your testimony that you have given today. The committee stands adjourned.

[Whereupon, at 1:05 p.m., the hearing was adjourned.]

APPENDIX

J.J. PICKLE, TEXAS, CHAIRMAN
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October 31, 1988

The Honorable William von Raab
Commissioner
U.S. Customs Service
1301 Constitution Avenue, N. W.
Washington, D.C. 20229

Dear Commissioner von Raab:

I want to thank you for your testimony at the Oversight Subcommittee's hearing on September 27, 1988. To complete our hearing record, I would appreciate having your responses to the attached questions by the close of business Friday, November 11, 1988. I am also enclosing questions submitted by the Honorable Byron L. Dorgan.

Your attention to this matter is greatly appreciated. If any assistance is needed, please contact Tom Arnold or Jeff Fox at 225-5522.

Sincerely,

J. J. Pickle

J. J. Pickle, Chairman
Subcommittee on Oversight

JJP/tal
Enclosures

cc: The Honorable Byron L. Dorgan

#1 - Binding Classification Opinions

Importers: Fingerhut
Procter & Gamble
Linmark

Issue: District Binding Rulings and Pre-Entry Classification

QUESTION:

During the September 27, 1988 hearing, you claimed that Customs new program for issuing "binding classification opinions" would solve the problems encountered in the Fingerhut, Procter & Gamble, and Linmark cases raised during the hearing. Could you please describe Customs new program in detail and then explain how that program will solve those problems?

RESPONSE:

All issues cited in the Procter & Gamble and Fingerhut cases revolved around the problems of classification and quota and/or visa requirements. Merchandise was detained because of misinformation or lack of authoritative information. Regarding the Linmark case, the turn around time for their ruling request was extremely excessive causing delays in the importation of the merchandise.

With the implementation of the District Binding Rulings Program, these potential problems will be alleviated. Importers who so choose will be able to receive all necessary and pertinent information regarding their merchandise in advance. No longer will an importer have problems with different classifications at different ports. With the National Import Specialist being the focal and control point there will be uniformity at all ports of entry. Ruling requests will be examined for sufficiency within 3 days of receipt therefore eliminating delays in response time because of lack of information.

Effective January 1, 1989, Customs will implement the District Binding Ruling Program. Attached is a general overview of this program.

Benefits from the program include:
- importer receives classification advice early - within 30 days
- decision will be binding on Customs
- if Customs revokes the ruling and importer can prove it is detrimental and they relied on the ruling, Customs will not apply a new classification for 90 days.

Attachment

Reliable Pre-Entry Classification

Customs has been concerned that its current system of providing classification advice needs improvement. Some perceived classification problems and some actual ones, as well as recommendations in the McKinsey Study on Customs commercial future, have confirmed the need for Customs to evaluate the ruling and classification process. The implementation in January of the Harmonized System, coupled with the increasing importance of solving classification problems early in an automated environment, provides us with a unique opportunity to construct a system of classification advice which is beneficial to both importers and Customs.

Customs has developed a classification rulings program, for January 1989 implementation, which will not only address the issue of fairness and timeliness, but will improve the consistency with which we apply classification decisions. The system expands the oversight role of National Import Specialists (NIS) for classification quality, taps the talent of a cadre of qualified "Deputy" National Import Specialists in the field for less complicated rulings, and uses better communications systems for uniformity in application.

For most requests, we plan to issue a binding ruling in 30 days. Of course, the most difficult and far-reaching issues will continue to be decided in the Office of Regulations and Rulings (OR&R), and there may be occasions when the need for a laboratory report or for consultation with another agency could slightly delay the decision. However, we believe the 30-day period is sufficient to respond to most classification questions. With the implementation of this program, all written classification advice from Customs will be binding.

The following is a description of how the new system will work:

> The importer may file a written request for classification advice with any district director. The local import specialist reviews the request for sufficiency, and forwards the request to the appropriate National Import Specialist in New York.

> The National Import Specialist, through the application of standard guidelines and an assessment of his workload determines who should issue the ruling, Headquarters, OR&R (in which case he notifies the importer), the NIS or a qualified "Deputy" NIS in the field. If the NIS or a Deputy is responsible for the ruling, it will be issued within 30 days and the decision circulated to all affected ports for uniform application. We are building improved communications equipment and automated systems enhancements for both timeliness in the decisions and consistency in their application.
>
> All Customs rulings will be binding at all ports of entry until revoked by the Office of Regulations and Rulings. If the revocation is detrimental to the importer and the importer can prove he relied on the ruling, Customs will not apply a new classification for 90 days.

This program, called the District Rulings Program, enhances the pre-entry classification program. Pre-entry classification will be used for large volumes of commodities (known as line reviews). It differs from the District Rulings Program in that, in most cases, Customs will contact prospective participants, and the DNIS decisions will be reviewed by the NIS prior to official notice to the importer. The review process should usually occur within 45 days of receipt by the NIS. Line review classification decisions given in writing will also be binding with the implementation of the Harmonized System on January 1, 1989.

Both procedures provide the timeliness and certainty importers need. And because the National Import Specialist is the focus and control point, quality and uniformity will result.

Q. What security requirements are contained in contracts for Automated Commercial Systems data entry services? How are they implemented?

A. Contracts are secured either independently, between Customs regions or districts and a contracting company, or through the General Services Administration (GSA). For the services in question, a GSA contract uniformly demands confidential handling of data, and a background security check. Also, the contractor is fully informed of his responsibility under the Privacy Act of 1974, 5 U.S.C. 522A.

Of the Customs offices which contract without GSA assistance, all require a background security check and make compliance with the Privacy Act a condition of the contract. In general, the same conditions of confidentiality are stipulated as are contained in the GSA contract. Local exceptions to these conditions exceed GSA parameters.

In non-GSA contracts examined, U.S. citizenship is universally required, but may be waived at the discretion of the responsible region or district level Customs officer.

In every case, breach of confidentiality is considered grounds for dismissal and individual contract employees are given notice of this fact when they begin employment.

Any individual contract employee who fails the Customs background investigation is dismissed.

In no case is a contract employee brought on board before the paperwork for a Customs background investigation is initiated.

In some regions and districts a preliminary law enforcement check is required before a contract employee may come on board. In these locations failure at this level of screening causes the individual to be rejected for the contract.

Question

> Please describe under what circumstances Customs would be liable for damages caused either negligently or intentionally by its employees? Is this different for Customs as compared with other federal agencies? If so, please explain why it is different and discuss whether it should be different.

In general, the United States would be liable under the Federal Tort Claims Act, 28 USC 2671 et seq., for damages caused by its employees acting within the scope of their employment. Liability is determined by the state law of the state where the tort occurred. Generally, damages caused intentionally would not be considered within the scope of employment. 28 USC 2680 provides that there are certain types of claims which are not permitted to be filed against the United States, including a particular exception for Customs for claims arising in respect of the assessment or collection of any tax or customs duty, or the detention of any goods or merchandise by a Customs or excise officer. This provision bars claims against the Government for damaged merchandise even due to negligence by Customs employees while the merchandise is under Customs detention. Kosak v. United States, 465 U.S. 848 (1984). This provision is necessary because it assures that Customs enforcement activities are not dampened by the threat of damage suits against the Government, and in view of the fact that there are alternative remedies for parties suffering damages in these circumstances, we believe that it is reasonable. One such remedy is an action against an individual, who, in appropriate circumstances, may be reimbursed by the Government pursuant to 28 USC 2006.

Question

> What authority does Customs have to accept office space, warehouse space, furniture, equipment, utilities, or related items provided by ports, transportation companies, container freight stations, or other private sector organizations?

In general Customs is not authorized to accept space, furniture, equipment, utilities, or related items provided by private sector organizations, in circumstances in which there would be conflict of interest concerns or in which acceptance would be an augmentation of our appropriation. However, the Treasury Department pursuant to 31 USC 321 has authority to accept such items as gifts on behalf of Customs. Moreover, there may be limited cases in which Customs is provided work space in return for providing expedited service, in circumstances in which there is no conflict of interest or even the appearance of a conflict of interest. In these cases, the use of the space or equipment enables Customs to perform its functions more efficiently and is accepted as a quid pro quo of providing special service.

Question It it the Subcommittee's understanding that Customs plans to require one-hour notice of all flights arriving at U.S. ports of entry. Is that correct? If so, what authority does Customs have to require such a notice? What is the purpose of notice? What organizations have been involved in developing the notice requirements? Have any organizations expressed concerns regarding the notice requirement? If concerns have been expressed, what consideration has Customs given to these concerns?

ANSWER: At this time, Customs requires a 1-hour advance notice for aircraft entering some, but not all U.S. ports of entry. Currently, any general aviation aircraft entering the U.S. from a foreign area must give Customs advance notice of its arrival. The amount of advance notice depends on where the aircraft is coming from and the location it is to be processed at by Customs. The requirements for specific locations are listed in the U.S. Customs Guide for Private Flyers (General Aviation Pilots) (copy attached). Generally speaking, for aircraft arriving from south of the U.S., a 1-hour advance notice is required. This allows Customs to run the necessary data base checks prior to the arrival of the aircraft and also allow Customs personnel to travel to the airport from their regular work site.

Customs authority to require this advance notice is contained in 19 CFR 122.23 and 122.31 and 19 USC 1433.

The notice is intended to provide information that will allow Customs to determine who is on board, perform data base checks, determine the potential risk associated with the arrival, and allow the inspector sufficient lead time to be at the airport prior to arrival of the aircraft (if travel is necessary).

The Aircraft Owners and Pilots Association (AOPA) and the National Business Aircraft Association (NBAA) worked with Customs in developing these notice requirements.

Both NBAA and AOPA had concerns regarding the requirements.

Both organizations were concerned as to the potential adverse impact on the general aviation community, particularly for aircraft arriving from south of the U.S. where distances are often too short to allow a 1-hour notice prior to takeoff. To address this problem, private aircraft pilots can contact Customs and provide advance notice up to 23 hours prior to their intended arrival.

Customs views the 1-hour notice as a necessary enforcement tool; as a result, we will continue to require the notice. However, we will still allow notification to be made prior to or after the aircraft takes off.

"follow-up with question [illegible] answer"

Question

Why does Customs prefer to clear Air Canada flight #797 in Detroit at midnight rather than pre-clear it in Toronto at 11:00 P.M. or in Los Angeles at 1:00 A.M.? How much would it cost Customs to pre-clear a flight departing Toronto at 11:00 P.M.? How much would it cost Customs to clear an arriving flight in Los Angeles at 1:00 A.M.? How much does it cost Customs to clear a flight from Toronto to Detroit arriving in Detroit at midnight?

Answer

The approval of an initial request would result in a precedent which would require significant staff increases and overtime expenditures. At least five other carriers are considering beginning late night transborder service from Toronto. Scheduled departure time of AC 797 is 2300, two hours after the current tour stop. Processing flight 797 would result in significant overtime expenses. Unlike Detroit, adhering to congressionally mandated overtime caps is a problem in Toronto. Regular processing of these new flights at Toronto would require the assignment of 3-5 additional inspectors. Customs is reluctant to increase staffing or expand preclearance service in Canada until the long-standing issue of privileges and immunities for preclearance personnel is resolved. A U.S. airline has already been denied late hour preclearance at Toronto.

An 0100 arrival at Los Angeles would over burden the already overworked inspectional staff. For reasons of staffing and overtime constraints, it has been a practice at LAX to deny landing rights after 2300. This flight was also denied by INS and Agriculture in Los Angeles. Detroit was chosen by Air Canada as a viable post-clearance location.

Customs approximate cost for preclearing AC 797 in Toronto would be $475.00 per flight if over 150 passengers.

Customs approximate average cost to clear AC 797 in Los Angeles at 0100 would be $1450.00 per flight.

Customs average cost to clear AC 797 in Detroit is $754.00 per flight.

QUESTION Please discuss the planning that went into the "Red Ball Seal" program before it was implemented.

ANSWER: Customs Regulations 19 CFR 18.4(a)(1) requires that conveyances and compartments used to transport merchandise be sealed with red in-bond seals. On June 11, 1985, a Customs Directive (CD 3270-03) was issued which set forth Customs policy for sealing containerized cargo transported under Immediate Transportation procedures. Although this Directive required immediate implementation, in order to allow local Customs officers time to notify the trade, to adjust our work practices, and to allow carriers time to obtain supplies of the seals, August 1, 1985, was agreed upon as the date for implementation.

This policy was necessitated because a Customs program and enforcement actions had demonstrated that the transportation of cargo under existing in-bond procedures represented a high enforcement risk, and that the tampering of in-bond cargo while in route to the port of destination was a recurring problem.

However, later that year, in an effort to strike a balance between Customs law enforcement responsibilities and the need to facilitate trade, Customs modified its decision and as an option to "Red Ball Seals" Customs allowed carriers to affix high-security seals to containers. Carriers which sealed containers with high-security seals and referenced the seal numbers on their manifests were not required to have "Red Ball Seals" placed on containers.

QUESTION

What is Customs policy when a broker or importer files an entry but does not pay his duties? Section III, B, p.LDS-4, of the Fines, Penalties, and Forfeitures Handbook states: "If the duty check is not attached, the entry package will be returned and treated as a non-filing." Customs response to Question 29 of the Subcommittee's questions of August 18, 1988, however, states: "The broker may also submit the entry summary without the estimated duties...within ten working days after release, if they have not received payment from the importer of record." For what liquidated damage claims is a broker or importer liable if he timely files an entry but does not attach a check for duties?

ANSWER

When a broker files an entry summary without a check for duties owed because he has not been paid those duties by the importer, it is the policy of Customs to accept the entry summary and initiate a failure to file against the importer. When duties are subsequently collected, the entry is converted to a late file and a claim for liquidated damages is issued in an amount equal to the value of the merchandise; however, in the body of the claim the violator is afforded the opportunity to pay an Option 1 (mitigated) amount of $200 plus an interest charge of .1% per day late times the duty owed. Payment of the mitigated amount will satisfy the claim and close the case.

When an importer files an entry summary without a check for duties, then the entry package is returned and treated as a non-file. This policy permitting brokers to file the entry summary without the check for duties owed was established pursuant to Customs Directive No. 3550-24, "Entry Simplification -Entry Summary and Entry/Entry Summary Flow", issued September 8, 1987. It should be noted that the FP&F Handbook is accurate as to importers and is being revised to include the provisions contained in Customs Directive No. 3550-24 as to brokers. The rationale behind this policy is to ensure the timely collection of trade statistics. (See Attached copy of Customs Directive, No. 3550-24).

QUESTION

The Fines, Penalties and Forfeitures Handbook (Page LDS-5) says that copies of notices for liquidated damages for late filing of entries must be provided to the surety. What is Customs policy about notification of the surety in cases of non-filings or of late payment of duties?

ANSWER

Supervisors have been advised that notices for liquidated damages are to be printed timely (within 5 days after being established in ACS) and mailed on the same day they are printed. The Assistant Commissioner, Office of Commercial Operations, has issued instructions to all appropriate regional and district personnel reminding them of their responsibility to send copies of the Notice of Liquidated Damages, CF 5955A, to sureties simultaneously with the issuance of the initial CF 5955A to the principal in accordance with 19 CFR 172.1. Brokers are also given courtesy copies of the CF 5955A at the time of issuance to the principal and surety. Upon the successful completion of the testing phase of the TECS II/FP&F Module interface, subsequent programming efforts will be directed to the development of specifications to facilitate the automatic generation of late file cases. (See Attached Telex)

QUESTION

Commissioner von Raab's memorandum to the field dated March 29, 1988 on the subject of "Fines, Penalties and Forfeiture Program Responsibilities" says that liquidated damages cases should be initiated 20 days after the violation is detected and that demands for liquidated damages should be mailed within five days after being entered into the computer. However, a June 1987 memorandum from the Director, Entry Procedures and Penalties Division states that "in many instances Customs does not issue the claim for liquidated damages against the surety for months after the date of entry." (See, Customs response to Question 31 of the Subcommittee's questions of August 18, 1988.) In addition, Customs indicates disparities among the regions regarding the time frames during which Customs has notified sureties of breaches of bond conditions. (See, Customs response to Question 27 of the Subcommittee's questions of August 18, 1988.) What is Customs doing to assure that demands for liquidated damages are timely and that copies of liquidated damages demands are sent to sureties?

ANSWER

The Customs Service did not implement the "user driven" concept in the ACS/FP&F Module until March 29, 1988. The Commissioner's memorandum of that date instructed field personnel on case initiation procedures whereby liquidated damages cases are to be generated by the system within 20 days after the violation is detected and demands are mailed to the bond principal (with a courtesy copy to the surety as required by section 172.1 of the Customs Regulations) within 5 days after being entered into ACS/FP&F Module. Formal notice to the surety will only occur if the bond principal fails to respond. In a telex dated September 7, 1988, the Assistant Commissioner, Office of Commercial Operations, reiterated the importance of compliance with these procedures.

ORIGINATING OFFICE: CO:T:O:F
DISTRIBUTION: See signature page

POLICIES & PROCEDURES MANUAL

CUSTOMS DIRECTIVE

NUMBER: 3550-24
ISSUE DATE: SEPTEMBER 8, 1987

SUBJECT: Entry Simplification - Entry Summary and Entry/Entry Summary Flow

1. PURPOSE

The purpose of this Directive is to provide guidelines for a uniform entry summary, and entry/entry summary flow for the entire Customs Service, and to finalize the operational requirements under Entry Simplification.

2. BACKGROUND

In order to maximize the benefits of the Automated Commercial System (ACS), and to fully utilize ACS functions as optimally as possible, an expeditious and orderly entry flow is essential. In addition, timely reporting of import trade statistics, for both ABI and non-ABI entries, is a top priority of the Customs Service.

3. POLICY

It is imperative that the Customs Service move immediately toward accomplishing uniformity of entry flow. Currently, existing procedures which do not lend themselves to timely statistical reporting and uniformity, must be modified. The procedures outlined below are consistent with the demands of both Entry Simplification and Census Interface.

4. ACTION

The following procedures are to be implemented at all ports of entry:

I. ENTRY SUMMARIES

1. SUBMISSION

The acceptance or "presentation" desk is to be abolished. All follow-up entry summaries will be presented to the entry and collections section. Customs' receipted brokers' copies are to be eliminated. Time-stamping machines should be made available to the public. The presenter of the entry summary will time-stamp the CF 7501 record copy, and may also time stamp a copy for his files, which will be his only receipt. For ABI statement entries, the filer will time-stamp the statement with the date of summary presentation.

U.S. G.P.O. 1987. 491-101/60119

All entry summaries, other than ABI statement, must be individually time-stamped by the filer. This date will serve as the summary date. It should be noted that for proof of filing purposes, a copy of the cancelled check and stamped CF 7501, or a copy of the invoices and stamped CF 7501, if there is no payment involved, will be accepted. Periodic random reviews of submitted entry summaries will be conducted to ensure that the time-stamp is current, and that the entry summaries were not prematurely date stamped prior to presentation.

Segregation at this point must be accomplished by the person presenting the entry summary, into a minimum of five categories:

1. All summaries contained on an ABI statement.
2. ABI non-statement which require collection processing.
3. Non-ABI which require collection processing.
4. ABI non-statement with no collection required.
5. Non-ABI with no collection required.

ABI entry summaries must be kept separate from non-ABI throughout all stages of processing.

2. CENSUS STATISTICAL REPORTING

In order to expedite statistical reporting, and reduce instances of torn or damaged statistical copies, filers of entry summaries will be required to deposit the statistical copy in a separate box or basket. Arrangements should be made for a point of deposit for these stat copies.

Any previous month's statistical copies processed after the 24th of the month, but before the 29th of the month, are to be forwarded to Census via courier or overnight express. ABI entries will not contain statistical copies at locations which are operational on Census Interface.

3. COLLECTION

Entry summaries are not to be separated from the checks prior to collection processing. All collections must be processed no later than 48 hours after the time of presentation. ACS now allows for the simultaneous collection and entry processing of ABI non-statement entry summaries. This has eliminated the need for a separate ENAX transaction to be performed, unless the Census warning error message is received. If so, the entry is to be forwarded to entry processing for ENAX input. Also, when processing what appears to be an ABI entry, where the team assignment number message and the entry summary processed message are not received, that entry is not in ABI status. The entry summary is to be rejected to the filer for resubmission as a non-ABI entry summary, with a statistical copy of the CF 7501.

4. BYPASS REVIEW

In order to achieve the highest immediate liquidation rate possible, entries must be bypassed prior to summary processing (ENAA/ENAX). Bypass is a cursory review consistent with the current policy outlined in the Customs Directive.

5. ENTRY SUMMARY PROCESSING

A. NON-ABI ENTRIES

ENAA/ENAX will be performed on all entry summaries after bypass review. Bypass entries will be processed as immediate liquidations. Non-bypass entries will be processed and forwarded to the appropriate import specialist team. Any entry summaries with error conditions will be placed in rejected status using system override prior to returning the entry summary to the filer for correction. Duty mismatch errors, however, cannot be overridden, and should be sent to the error resolution unit. This unit will make any necessary filer contact.

B. ABI, NO COLLECTION REQUIRED

ABI non-statement entry summaries must be accepted using the ENAX function. For ABI Statement entry summaries, the DSAA function will set the entry record.

C. ABI STATEMENT AND NON-STATEMENT, COLLECTION REQUIRED

Entry summary input for both error free ABI statement and non-statement entries, is accomplished simultaneously with the collection function. If these entries are received for ENAX processing from the collection section, there is a Census error in the record. In this situation, the ENAX function must be performed to process the summary, and to receive the error message on ABI non-statement entry summaries. Failure to perform ENAX in these circumstances, will result in the entry summary appearing on the "Late Report," and untimely transmission of electronic statistical data to the Bureau of the Census. The Census error listing should be identified by line number and error code, and the entry forwarded to the import specialist for review. If a bypassed entry summary is identified as having a Census error at the time of ENAX, the entry should be forwarded to the import specialist for review.

6. IMPORT SPECIALIST REVIEW

All non-bypass entries will be sent for import specialist review after summary processing. In order to comply with Census timely reporting guidelines, entries received with the Census error listing attached should be processed and returned as soon as possible for system acceptance or rejection, but no later than 3 days after receipt by the team.

7. REJECTED ENTRY SUMMARIES

Detailed procedures providing guidelines for the acceptance and rejection of entry summaries, will be the subject of a separate Directive. In essence, however, all rejects, both incoming and outgoing, must be processed through ACS, once a summary is on file in ACS. No manual tracking system will be tolerated.

8. DUTIABLE ENTRY SUMMARIES WITHOUT PAYMENT

In instances where the importer, as importer of record, refuses to provide the broker with payment of duties in a timely manner, the broker may submit an entry summary without payment of estimated duties and applicable fees.

In such cases, a letter of explanation, signed by the license holder or office manager, must accompany the entry summary, and the entry should be submitted on or before the 10th business day following release of the merchandise. After ACS and import specialist processing, any such entry summary should be processed for liquidated damages.

II. ENTRY/ENTRY SUMMARIES

1. SUBMISSION OF NON-ABI QUOTA ENTRY/ENTRY SUMMARIES

Non-ABI quota entry/entry summaries will be presented to the Entry Unit where the filer will time-stamp the record copy of the CF 7501.

The following two processing steps (A and B) may be reversed if it is more beneficial to the entry/entry summary flow of a particular port.

A. SUMMARY PROCESSING

If there are any errors (importer numbers, bond type, etc.), the presentation time will be voided and the entry/entry summary will be placed in rejected status. Prior to returning the entry/entry summary to the filer, it should be reviewed by the import specialist for any additional errors. This will limit instances of multiple rejection. When the entry/entry summary is returned, a new presentation time will be given by the filer.

B. IMPORT SPECIALIST REVIEW

The import specialist will review the entry, circling in red, or highlighting in yellow, the collection or record copy of the CF 7501 for quota purposes. A quota reporting sheet will no longer be used. Since the quota system has on-line capability, locations which are still maintaining separate quota CF 7501 copies should no longer do so. By using the collection or record copy for quota input, a hard copy may be retrieved through the files, thereby eliminating duplicate filing of CF 7501's. If the entry/entry summary has to be rejected, the presentation time is to be voided by the import specialist and the entry/entry summary returned to the Entry Unit to be placed in rejected status (ENRJ). Upon resubmission to Customs, the entry must be removed from rejected status (ENAC). The Census statistical copy will remain with the entry/entry summary for removal by the quota unit and mailing to the Bureau of the Census. It should be noted that in the case of all entry/entry summaries, blocks 3 and 4 of the CF 7501 statistical copy should not be filled in with a date.

C. QUOTA PROCESSING

The entry/entry summary will be processed through the quota system (QSUP). If accepted, the quota acceptance will be notated on the permit or Delivery Authorized Document (DAD), and record copy of the CF 7501. The collection copy will be left with the entry/entry summary to be removed by the collection section. If all lines on an entry/entry summary have been denied quota status due to a category which is filled, then a warehouse entry using the same entry number may be substituted. Prior to returning the entry/entry summary to the filer, Headquarters Quota Section must be contacted so that the denied line item(s) may be deleted from the quota system. A correction to the summary data in ACS will be made (ENAC), changing the entry type to "warehouse."

If a quota has filled for part of the shipment, the denied portion may be extracted (invoice(s) and visa(s)), and a warehouse entry with a new entry number may be substituted for the denied portion of the merchandise. Prior to returning the entry/entry summary to the filer, Headquarters Quota Section must be contacted so that the denied line item(s) may be deleted from the quota system. The quota approved merchandise will be released on the original entry, ensuring that the CF 7501 copies and the ACS record accurately reflect all changes in estimated duties and fees.

A quota printout will only be necessary as a part of the entry/entry summary record when the shipment contains merchandise which is in a "hold" status, or which has been denied quota status.

D. COLLECTION

The collection will be done using the (quota highlighted) CF 7501 collection copy. The permit or DAD will be marked "PAID", and the entry/entry summary returned to the filer, or forwarded for cargo selectivity.

E. CARGO SELECTIVITY

Cargo selectivity will be performed. If it is determined to be a general examination, the delivery authorized document will be returned to the filer for release of the merchandise, and the entry will be returned to the import specialist for final review and liquidation. Although there may be a general examination in the selectivity record, Inspection and Control will determine the type of examination to be performed. If an intensive examination is determined, the entry will be sent by Customs to the cargo site for examination and release of merchandise. The completed entry will be returned to the import specialist for final review and liquidation.

2. SUBMISSION OF NON-ABI, NON-QUOTA ENTRY/ENTRY SUMMARIES

Processing stages of this type of entry/entry summary are the same as for non-ABI quota entry/entry summaries, with the exception of the quota processing. However, the statistical copy will be removed at the collection point for mailing to the Bureau of the Census.

3. SUBMISSION OF ABI QUOTA NON-STATEMENT ENTRY/ENTRY SUMMARIES

These entry/entry summaries are to be presented to the Entry Unit. They are to be kept separate from non-ABI entries throughout all stages of processing. The entry is to be clearly noted in box 2 of the CF 7501 as ABI/N.

A. IMPORT SPECIALIST REVIEW

ABI/N quota entry/entry summaries are to be processed immediately upon receipt. The import specialist will perform the review and quota circling (highlighting) of the CF 7501 collection or record copy for quota reporting. If there is any type of error on the entry, it must be rejected to the broker for retransmission of data. No pen and ink changes may be made by the import specialist to data which has already been transmitted.

B. QUOTA PROCESSING

If during the processing of an ABI/N designated quota entry/entry summary through the quota system (QSUP), the banner under QSUP states "Non-ABI," the entry/entry summary has not obtained ABI status. No further quota input should be performed. The presentation time should be voided, and the entry/entry summary returned to the filer for resubmission as a non-ABI entry. The entry at this point may not be retransmitted as ABI by the filer.

Rejection through the ACS system will not be done in this case. In instances where a Census reject message appears during QSUP, the entry/entry summary must be forwarded for ENAX processing. The Census error may be deemed allowable (PF 7 key) since the entry/entry summary has already successfully passed through import specialist review. For quota closings (partial or complete), the same procedures as for non-ABI entry/entry summaries should be followed. All line item, as well as estimated duty and fee changes, must be accomplished by the filer through ABI prior to returning the entry/entry summary for processing.

C. COLLECTION/SUMMARY PROCESSING

The collection function (ACDA) will simultaneously process the summary for ABI non-statement entries. The separate ENAX function is no longer required, unless a Census error condition has been previously identified, as described in step B above. All other collection procedures are identical to those for non-ABI entry/entry summaries. The entry/entry summary will now be forwarded for cargo selectivity.

D. CARGO SELECTIVITY

Cargo selectivity procedures are identical to those for non-ABI entry/entry summaries.

4. ONE STOP PROCESSING FOR ABI QUOTA ENTRY/ENTRY SUMMARIES

Certain locations, because of their high quota volume, will be using the one stop quota processing procedures instead of the traditional processing methods. This procedure combines the ACS quota and selectivity processing functions into one area performed by the same personnel. In order to have their entry/entry summaries processed through one stop, a filer must be ABI cargo certified. Guidelines for the implementation and processing of one stop are the subject of a separate issuance.

5. PROCESSING FOLDERS

All entry/entry summaries will be transmitted in color coded folders from the time of presentation to the completion of the processing. These folders will be made available to the filer in the Entry Unit. Quota entry/entry summaries will be transmitted in blue folders; warehouse entries, including entry summaries, in green folders; all other entry/entry summaries, in red folders. These folders are intended to be reusable. Therefore, upon completion of entry processing, i.e., input through cargo selectivity, they are to be returned to the Entry Unit for future use.

III. PREPARATION OF ENTRY DOCUMENTS

Entry documents for both entry summaries and entry/entry summaries must be submitted by the filer in an ordered manner. To ensure uniformity in this matter, entry documents are to be arranged in the following order:

Entry Summaries*

Check
Collection Copy (if used)
Certification (e.g., C321)
Record Copy
3461 or Alt. (DAD)
Invoice
Packing List
Bond
Other Agency Documents as Needed
Multi-Use CF 7501 as Required

Entry/Entry Summaries

Statistical Copy (Non-ABI only)
Check
Collection Copy (if used)
CF 3461 or Alt. (DAD)
Record Copy
Invoice
Packing List
Bond
Certification (e.g., C321)
Other Agency Documents as Needed
Multi-Use CF 7501 as Required

* For Non-ABI entry summaries, the CF 7501 statistical copy is submitted separately by the filer.

All documents should be stapled together in the upper left hand corner by the filer of the entry summary or entry/entry summary.

IV. DOCUMENT FILING

The Batch Filing System must be used for the liquidation and filing of all entry summaries and entry/entry summaries. In addition, re-batching will be required for those entries which have been removed from their original batch file. No manual batching system or interfiling will be tolerated. In addition, entry documents will not be filed in numerical order. No unique identifier other than entry number will be shown on the CF 7501.

5. CONFLICT WITH PRIOR ISSUANCES

All previous issuances which conflict with the instructions contained herein are subordinated by this Customs Directive.

6. RESPONSIBILITIES

It is the responsibility of Regional Commissioners, and District, Area, and Port Directors, to assure compliance with the provisions of this Directive.

7. EFFECTIVE DATE

This Directive is effective 30 days from date of issuance.

Michael H. L

Acting Commissioner of Customs

Distribution
G-25 All Managers/Supervisors

SEP 7 1988

TELEX

U.S. CUSTOMS SERVICE
FIELD OPERATIONS DIVISION
JERRY WORLEY

ROUTINE

566-8122

TO : ALL REGIONAL COMMISSIONERS, DISTRICT AND AREA DIRECTORS
FROM : ASSISTANT COMMISSIONER, OFFICE OF COMMERCIAL OPERATIONS
SUBJECT: EARLY NOTICE TO ALL INTERESTED PARTIES
REFERENCE: FP&F INFORMATIONAL NOTICE NUMBER 71

IT HAS COME TO OUR ATTENTION THAT SOME DISTRICTS DO NOT ROUTINELY SEND A COPY OF THE CF 5955A INVOLVING EITHER A PENALTY OR CLAIM FOR LIQUIDATED DAMAGE TO ALL INTERESTED PARTIES AS PROVIDED FOR IN 19 CFR 162.31 AND 19 CFR 172.1. IT IS OUR BELIEF THAT IF THE SURETY AND BROKER (IN ENTRY RELATED VIOLATIONS), AS WELL AS THE PRINCIPAL ARE NOTIFIED AT THE TIME OF ISSUANCE OF THE INITIAL CF 5955A, IT WILL GENERATE ADDITIONAL PRESSURE ON THE PRINCIPAL TO SETTLE THE CASE PROMPTLY. IT WILL ALSO HELP ELIMINATE THE COMPLAINTS OF SURETIES THAT THEY DID NOT RECEIVE ADEQUATE NOTICE PRIOR TO THE ISSUANCE OF A COLLECTION NOTICE FROM THE NATIONAL FINANCE CENTER.

EFFECTIVE IMMEDIATELY ALL REGIONS AND DISTRICTS WILL SEND OUT COPIES OF THE CF 5955A TO THE SURETIES AND BROKERS AT THE TIME OF THE ISSUANCE OF THE CF 5955A TO THE PRINCIPALS. THERE ARE ADEQUATE COPIES OF THE CF 5955A FOR THIS PURPOSE. ANY PROBLEMS SHOULD BE BROUGHT TO THE ATTENTION OF THE HEADQUARTERS, FINES, PENALTIES, AND FORFEITURES BRANCH AT FTS 566-8122.

EHMach
E.H. MACH

Q: Describe Customs procedures for preassigning entry numbers to brokers and importers. How many entry numbers can be assigned at one time? What type of oversight is there of these entry numbers?

A: Customs' policy and procedures for use and assignment of new entry numbers is contained in Customs Directives 3500-08 and 3500-10 of June 19, 1986. (Copies attached) In summary, Customs no longer preassigns entry numbers for other than the smallest entry filers. All entry filers who file 50 or more entries per month are required to obtain a national filer code from Customs Headquarters and to assign and control their own entry numbers.

Those entry filers without a national filer code obtain pressure sensitive bar-coded labels with pre-printed entry numbers from their local Customs office. These labels carry an entry filer code representing the district in which the entry is being filed and can only be used in that district. District offices are responsible for controlling distribution to their ports and for reordering through Headquarters. These labels are saleable forms, CF 338 priced at $3.05 per 100 pairs of labels, however users are rarely charged this cost. Because of the low volume usage of such users (importer only, not brokers) most locations provide them at no charge.

ORIGINATING OFFICE: CO:T:A:C:G

DISTRIBUTION: P-35, G-01(INSPECTORS, G-02(IMPORT SPECIALISTS, O-01(MANAGERS/SUPERVISORS)

POLICIES & PROCEDURES MANUAL

CUSTOMS DIRECTIVE

NUMBER: 3500-08

ISSUE DATE: June 19, 1986

SUBJECT: Customs New Entry Number - Instructions for Customs Field Offices

1. PURPOSE

To establish implementation guidelines and instructions for a new Customs entry numbering procedure.

2. BACKGROUND

The Final Rule concerning Customs Regulations amendments to revise the Customs entry numbering procedure was published in the Federal Register on Monday, July 8, 1985 (Vol. 50, No. 130, page 27816). The effective date of the rule is October 1, 1985, but compliance with this effective date was waived by Customs in order to provide additional implementation time for brokers and importers. October 1, 1986 has has now been established as the nationwide implementation date.

3. ACTION

a. Instructions - Attached to this directive are complete instructions for Customs field offices for implementing the new entry numbering procedure.

b. Response to Inquiries - Inquiries concerning the proper use of this new entry numbering procedure should be answered following the guidelines and instructions set forth in the Directive. Any disputes concerning these instructions will be referred to Customs Headquarters, Automated Commercial System Division, General Development Section (FTS 535-4155; (202) 535-4155).

4. RESPONSIBILITY

It is the responsibility of all Deputy Assistant Regional Commissioners (C&V and I&C), District, Area, and Port Directors to assure compliance with this Directive.

CUSTOMS FORM [illegible]

5. **EFFECTIVE DATE**

These instructions are effective October 1, 1986. The Directive will continue to be in effect until revoked.

Alfred R De Angelis

Deputy Commissioner

Attachments

New Customs Entry Numbering Procedure
Instructions for Customs Field Offices

Introduction

For the past three years, Customs has been working with the trade community to develop a new entry numbering concept which is simple, flexible and easy to manage. A final rulemaking notice for this procedure was published in the Federal Register on July 8, 1985 (50 F.R. 27816). The administrative details of this new procedure have now been completed and October 1, 1986, has been established as the nationwide implementation date. This entry numbering system has been designed to provide maximum flexibility to brokers and importers in assigning and controlling their own entry numbers, while at the same time, relieving Customs field offices with most of this burden.

Features of the New Procedure

1. All brokers (and some importers) actively filing entries have been assigned a 3 character national entry filer code by Headquarters. Larger volume brokers have been assigned a 3 digit (numeric) code, while the importers and smaller volume brokers have been assigned an alphanumeric code (one alphabetic character followed by two numerics).

2. The entry filer code will become the first 3 characters of the new entry number regardless of where entries are filed. This code will replace the broker (box) number (s) currently assigned by Customs field offices (ABE File in ACS).

3. Fiscal year and district/port will no longer be associated with the entry number.

4. Brokers and importers with an assigned entry filer code will be responsible for assigning and controlling their own entry numbers. Basically, these numbers may be assigned in any manner and in any order provided that there are no duplicate entry transactions nationally. See Customs Directive - **Customs New Entry Number Instructions for Brokers and Importers** for some minor restrictions.

5. All brokers and importers with an assigned entry filer code will be required to use data processing equipment to compute the check digit and print the entry number.

6. For those entries **not** prepared by computer, brokers and importers will be required to purchase (from commercial sources) and affix to the original copy of the entry and entry summary documents, a pressure-sensitive bar-coded label with the entry number (and check digit) pre-printed.

Customs Directive - Instructions for Brokers and Importers

1. It is important that all Customs personnel be familiar with the complete details of this Customs Directive (Attachment 1) which has been recently mailed to the headquarters office of each broker and importer company which have been assigned a national entry filer code.
2. It is the responsiblity of each firms's headquarters office to coordinate implementation of this new procedure with all of the firm's local offices.
3. Sufficient copies of the directive are being printed through the Customs Issuance System for distribution to local broker and importer offices.
4. Broker headquarters offices which have not received their entry filer code assignment and the directive should contact Mr. William Nolle at (202) 535-4155 or Mr. Richard Bonner at (202) 535-4141 at once.

District Listing of Entry Filer Codes

1. For each district, a computer listing of entry filer code assignments for all brokers filing entries in the district has been attached. (Attachment 2).
2. Districts need not be concerned if a broker company is not listed under all ports in the district, provided that the broker is shown at least once.
3. Please contact Mr. Nolle or Mr. Bonner if there are any descrepancies in this list.
4. Effective immediate, local offices are responsible for updating broker entry filer code records (BFB file) for brokers newly permitted to file entries in the district, and have previously been assigned an entry filer code by Headquarters (BFC file). See instructions in Attachment 3).

Entry Filer Codes for Importers

1. Attachment 4 is a listing of those importers filing their own entries which have been assigned an entry filer code by Headquarters.
2. Only a few importer companies have been assigned entry filer codes. Generally, importers filing more than 50 entries per month and those having a computerized entry processing system have been assigned a code.

3. These importers will be responsible for assigning and controlling their own entry numbers for all Customs entries nationwide and be subject to the same rules as broker companies including providing and affixing pressure sensitive bar-coded labels on entries not prepared by computer.

Importers Without Entry Filer Codes

1. Since most importers filing their own entries have not been assigned a national entry filer code, Customs district offices will be responsible for assigning and controlling entry numbers for these importers.

2. A simple procedure has been developed for this purpose. Pressure sensitive bar-coded labels with pre-printed entry numbers will be available for sale in all field locations for use by importers without an entry filer code. Use of these labels is mandatory for these importers.

3. The entry number on these labels will carry an entry filer code of CNN, where NN district number. For example, Houston District 53 will be designated as entry filer code C53. The labels will be marked "IMPORTER".

4. All CNN labels will have entry numbers assigned sequentially starting with 0000001. These labels may only be used in the district to which assigned. Headquarters has ordered an initial supply of these labels for each district. District offices will be responsible for controlling distribution to its ports and for reordering through Headquarters.

5. For ports using the CF 3461 (ALT), single (one per entry number) labels have been ordered. Double labels have been ordered for all other ports. Where both the CF 3461 and a CF 7501 are filed, the importer will be required to use two labels, affixing one to the CF 3461 and the other to the CF 7501. When using the new CF 3461 (ALT) which has the bar-coded entry number pre-printed, only one label will be required (for the CF 7501).

NOTE: The importer will still be required to type or write the entry number on all copies of the Customs form.

6. Some districts with several importers filing their own entries have requested Headquarters to develop an automated system for assigning and controlling these labels based on importer number. Programming of this system has been requested and procedures will be provided to field offices when completed.

Brokers Without Entry Filer Codes

1. Headquarters, through coordination with district offices, has identified all broker companies actively filing entries, assigned a national entry filer code, and mailed this information to the headquarters office of each firm. These companies have been advised to forward the information to its headquarters office when erroneously directed to a local office.

2. Arrangements have been made between the Commercial Systems Branch and the Entry Licensing and Restricted Merchandise Branch in Headquarters for timely notification of new national entry filer code assignments so that the ACS (BFC file) can be updated by Headquarters and the district offices and brokers advised with sufficient lead time to implement this entry numbering procedure. The district office will be responsible for updating the BFB file.

3. Despite all of these preparations, it is possible that some brokers will not receive the necessary information in time. Therefore, an emergency procedure has been devised.

4. Pre-numbered pressure-sensitive bar-coded labels will be available for sale in all field offices for these emergency situations.

5. The entry number on thise labels will carry an entry filer code of BNN, where NN = district number. For example, Houston District 53 will be entry filer code B53. These labels will be marked "BROKER".

6. All BNN labels will have entry number assigned sequentially starting with 0000001. They may only be used in the assigned district. Headquarters has ordered an initial supply of these labels for each district. As with the labels for importers, these labels have been ordered as one label per number or two labels per number, depending on whether or not the CF 3461 (ALT) is used. District offices will be responsible for controlling distribution to its ports and for reordering through Headquarters.

7. Field offices are responsible for maintaining tight control in the distribution and use of these labels. They are only to be used until the broker company can obtain labels with its own entry filer code.

Attachment 1

Customs New Entry Number - Instructions for Brokers and Importers

This is a separate Customs Directive which may be obtained through the Customs Issuance System. (3500-10 dated June 19, 1986)

Attachment 2

Computer listing entry filer code assignments for all brokers in a district

This information has been initially provided to each district office individually and is not included with the distribution of this Directive through the Customs Issuance System.

Attachment 3

ACS Entry Filer Code File Maintenance

Entry Filer Code files have been established in ACS. The function codes in CICS are BFC and BFB. These files replace the current ABE records.

The BFC file is a Headquarters maintained file which establishes the national entry filer code. The BFB file is a locally maintained file which authorizes a national filer to submit entries in the district. Note: A code on file in any one port in a district allows the filer to submit entries in any port in that district.

BFC

There are four functions in the BFC file: BFCA (add); BFCC (change); BFCD (delete) limited to Headquarters use only and BFCL (locate) available for local use.

There are four keys in the BFCL function as follows:

1) 1/XXX filer code - where XXX represents the 3-character filer code. The screen will display codes listed in alphabetic, alpha/numeric - then numeric order.

2) 2/broker or importer name - this function enables an alpha search of this file. In order to facilitate alpha searches extreme care has been taken to standardize input. Abbrevations have been used whenever possible - ASSOC, CORP, CHB etc., and punctuation has been eliminated. Company and individual names have been input as follows:

   - Arrow Customhouse Broker
     as ARROW CHB

   - Int'l Clearance Company
     as INTL CLEARANCE CO

   - I.P.L. Limited
     as I P L LTD

   - ABC Incorporated
     as A B C INC

   - A.W. Rodgers & Co., Inc
     as A W RODGERS & CO INC

- Charles R. Smith, Jr.
  as CHARLES R SMITH JR

- Charles R. Smith dba C.R. Int'l
  as SMITH dba C R INTL

3) 3/Cross reference I.D. - Currently not in use.

4) 4/XX/XXX filer type/filer code - where XX represents the filer type and XXX the three character filer code. There are 5 filer types:

   01 - broker
   02 - importer
   03 - carrier - Currently not in use
   04 - freight forwarder - Currently not in use
   05 - U.S. Customs

Placing the cursor on the item and entering will result in the BFCS (see) screen (copy attached). Note: the following fields; status, cross reference ID, cross reference type and payment mode are not in use.

BFB FILE

The BFB file is a locally maintained file for filer type 01 (broker) based upon data from the BFC file. Field offices will not be able to add any BFB records unless there is an existing BFC record. Also, brokers will not be able to file entries in a district unless a BFB record exists for that broker in any port in the district.

Field offices will not be required to establish BFB records for current brokers. However, effective immediately, field offices are responsible for updating BFB records for newly licensed brokers.

The function codes in the BFB file are : BFBA (add), BFBC (change), BFBD (delete), and BFBL (locate).

BFBA

For a new broker, Headquarters will establish the BFC record and will send the broker notification of the filer code. The broker will present this letter to the district where entries will be filed and the district will establish the BFB record. Using BFBA (copy of screen attached) the operator will enter the filer code and district/port (until the old broker code field is removed, effective October 1, 1986, operators should use the space bar for this three character field).

Normal system response will show the broker's name and corporate address. If the broker's local address is different from the corporate address the operator should enter the firm's local address. After entering, the correct system response will be "data added to data base".

If the correct filer code from the broker's notification was input and the system response is any of the following, notify Headquarters ACS Division immediately.

1) Filer not on BFC Table
2) Duplicate key found
3) Different company names

BFBL

There are three keys in the BFBL function as follow:

1) 1/XXX - Entry filer code
   1/XXX/DDPP - Entry Filer code/District Port
   The screen will show the new filer code in ascending order by filer codes and district/port

2) 2/DDPP - district port
   2/DDPP/XXX - district port/old broker code
   Screen will show filers in ascending order by old broker codes.

3) 3/XXX - old broker code
   Screen shows filers in ascending order by old broker code.

BFBC

The BFBC function allows field offices to change the broker's name and address.

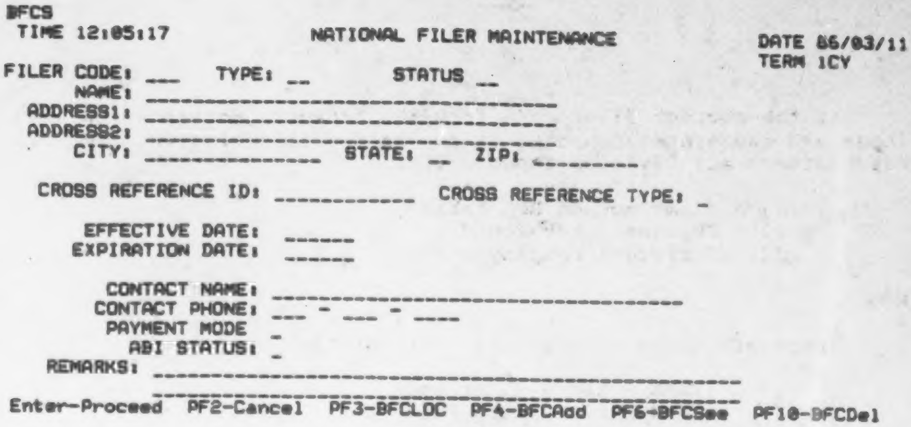
In order to arrive at the BFBC function, use any the BFBL functions, find the item to be changed, place cursor on item and press PF1 key.

Note: When Headquarters created the BFB records for current brokers the system inserted the corporate adresses into the address field. Field offices should use BFBC for all filers in the district and change these addresses to the firms' local addresses.

BFBD

Extreme caution should be taken before deleting any BFB records. Once a broker is deleted, the company will not be able to file entries in the district.

In order to delete enter BFBD XXX/DDPP XXX - (Entry filer code/district port/old broker number) and follow screen direction.

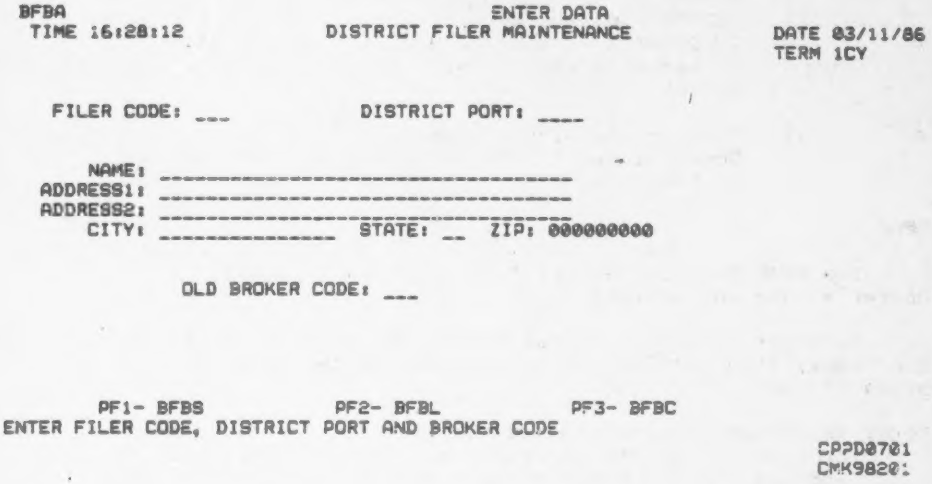


```
BFCS
 TIME 12:05:17           NATIONAL FILER MAINTENANCE              DATE 86/03/11
                                                                 TERM 1CY
FILER CODE: ___   TYPE: __        STATUS __
      NAME: ___________________________________
  ADDRESS1: ___________________________________
  ADDRESS2: ___________________________________
      CITY: _______________  STATE: __  ZIP: _________

   CROSS REFERENCE ID: ____________  CROSS REFERENCE TYPE: _

        EFFECTIVE DATE: ______
       EXPIRATION DATE: ______

          CONTACT NAME: ___________________________________
         CONTACT PHONE: ___ - ___ - ____
          PAYMENT MODE _
            ABI STATUS: _
    REMARKS: __________________________________________________
             __________________________________________________
 Enter-Proceed  PF2-Cancel  PF3-BFCLOC  PF4-BFCAdd  PF6-BFCSee  PF10-BFCDel
```



```
BFBA                                   ENTER DATA
 TIME 16:28:12             DISTRICT FILER MAINTENANCE            DATE 03/11/86
                                                                 TERM 1CY


   FILER CODE: ___          DISTRICT PORT: ____


       NAME: __________________________________
   ADDRESS1: __________________________________
   ADDRESS2: __________________________________
       CITY: _______________  STATE: __  ZIP: 000000000

              OLD BROKER CODE: ___



        PF1- BFBS          PF2- BFBL          PF3- BFBC
ENTER FILER CODE, DISTRICT PORT AND BROKER CODE
                                                                 CPPD0701
                                                                 CMK98201
```

Attachment 4

Computer listing of importers which have been assigned an entry filer code by Headquarters

This information has been initially provided to each district office individually and is not included with the distribution of this Directive through the Customs Issuance System.

☆U.S. Government Printing Office : 1986 - 491-191/40017

ORIGINATING OFFICE: CO:T:A:C:G DISTRIBUTION: P-35, G-01(Inspectors), G-02(IMPORT SPECIALISTS) 0-01(MGRS/SUPV), Brokers and Importers)

POLICIES & PROCEDURES MANUAL

CUSTOMS DIRECTIVE

NUMBER: 3500-10

ISSUE DATE: June 19, 1986

SUBJECT: Customs New Entry Number - Instructions for Brokers and Importers

1. PURPOSE

To establish implementation guidelines and instructions for a new Customs entry numbering procedure.

2. BACKGROUND

The Final Rule concerning Customs Regulations amendments to revise the Customs entry numbering procedure was published in the Federal Register on Monday, July 8, 1985 (Vol. 50, No. 130, page 27816). The effective date of the rule is October 1, 1985, but compliance with this effective date was waived by Customs in order to provide additional implementation time for brokers and importers. October 1, 1986 has has now been established as the nationwide implementation date.

3. ACTION

a. Instructions - Attached to this directive are complete instructions for brokers and importers for implementing the new entry numbering procedure.

b. Response to Inquiries - Inquiries concerning the proper use of this new entry numbering procedure should be answered following the guidelines and instructions set forth in the Directive. Any disputes concerning these instructions will be referred to Customs Headquarters, Automated Commercial System Division, General Development Section (FTS 535-4155; (202) 535-4155).

4. RESPONSIBILITY

It is the responsibility of all Deputy Assistant Regional Commissioners (C&V and I&C), District, Area, and Port Directors to assure compliance with this Directive.

5. **EFFECTIVE DATE**

These instructions are effective October 1, 1985. The Directive will continue to be in effect until revoked.

Deputy Commissioner

Attachments

NEW CUSTOMS ENTRY NUMBERING PROCEDURE FOR BROKERS AND IMPORTERS

Introduction

For the past three years, Customs has been working with the trade community to develop a new entry numbering concept which is simple, flexible and easy to manage. The system has been designed to provide maximum flexibility to brokers and importers in assigning and controlling their own entry numbers.

A final rulemaking notice for this procedure was published in the Federal Register on July 8, 1985 (50 F.R. 27816), a copy which is included as Attachment A. The administrative details of this new procedure have now been completed and October 1, 1986, has been established as the nationwide implementation date. **The old (current) entry numbering procedure must be used through September 30, 1986.**

A copy of this procedure is being mailed to all Customs field offices, headquarters offices of all broker companies and several importer companies. All Customs, broker and importer personnel should understand this information, particularly the format of the new number and the responsibilities of Customs Headquarters, Customs district offices, brokers and importers as they relate to this new procedure.

Following is a comparison of the old (current) entry numbering procedure and the new procedure.

Old (Current) Procedure

Format of the entry number FY-NNNNNN-N

FY = Fiscal year
NNNNNN = a 6 digit number assigned and controlled by Customs field offices by broker (box) number
N = Check digit - sometimes computed by brokers and importers and sometimes by Customs (e.g. pre-numbered CF 3461's)

New Procedure

Format of the entry number XXX-NNNNNNN-N (Hyphens required)

Note: **Fiscal Year will no longer be associated with the entry number as a requirement established by Customs.**

XXX = Entry Filer Code - Customs Headquarters will assign a 3 character (numeric, alphabetic, or alphanumeric) entry filer code to **all broker companies.** Customs will assign an entry filer code to certain importers filing their own Customs entries based on entry volume, frequency of entry filing, and other considerations such as having an automated entry preparation system. The entry filer code will be used by the broker or importer nationally as the first 3 characters of the entry number **regardless of where entries are filed. This code will replace the broker (box) number (s) currently assigned by Customs field offices which can no longer be used.**

NNNNNNN = Broker or importer assigned number - a 7 digit number (shown with leading zeros) **assigned and controlled by the broker or importer. Customs field offices will not be responsible for assigning and controlling entry numbers.** This number may be assigned in any convenient manner.* Numbers do not need to be assigned in any particular sequence, nor do entries have to be submitted in any particular order. An entry number may not be used, however, more than once nationally. Each number will be used to identify an importation uniquely. The number will follow the transaction throughout its life span from cargo release, through filing of the entry summary and liquidation.

The procedure requires that all brokers and importers with a national entry filer code assign and control their own entry numbers on a **national basis** . The headquarters office of each company is responsible for ensuring that entry numbers are unique for all of a firm's transactions nationally. That is, entry numbers will no longer be related to Customs entry filing locations. Therefore, duplication of entry numbers will not be accepted for a given entry filer. For example: If your filer code is 173 and you have offices in New Orleans, St. Louis and New York, your entry numbers in **all 3 locations** will begin with 173. You may not duplicate the unique portion of the number within a port or among the ports. You may have entries numbered in New Orleans 173-6025473-1, St. Louis 173-6025474-9, New York 173-6025476-7. You may **not** have New Orleans, St. Louis, and New York all using 173-6025473-1.

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*Seven digits provides each entry filer with 10 million numbers. It is not expected, therefore, that the high order (left most) digit will ever be used by most entry filers.

In order to allow for an eventual transition, however, to a second series of numbers for large volume brokers, **use of the high order digit will initially be restricted to either 0, 1, 2, 3, or 4.** This restriction will be in effect for approximately 5 years.

N = Check Digit - a check digit computed by the broker or importer according to the formula shown in Attachment B. **Customs will no longer be responsible for this function. All brokers and importers having a Customs Headquarters assigned entry filer code will be required to use a computer to compute the check digit and print the entry number.** A simple, inexpensive procedure is available for brokers and importers that do not prepare entries by computer. See Procedure for Non-Automated Entry Preparation.

Procedure for Automated Entry Preparation

For Customs entry forms which are computer prepared and where entry number assignment control and printing is accomplished by the broker or importer using a computer, the entry number (with computed check digit) will be printed in the specified format in the entry number block **on all copies** of the Customs form. There is one exception to the entry number print format requirement. Due to a space limitation on the CF 7501 Entry Summary (Entry Number - block #1), the 3 character entry filer code will be printed outside and immediately to the left of block #1.

The broker/importer assigned number, with hyphen and check digit, will be printed inside block #1. See example below. A hyphen between the entry filer code and broker/importer assigned number is not required in this situation.

Format for CF 7501 only

Entry Filer Code ⟶ A65

1. Entry No.
00032614-1

There are no other requirements related to the new entry number for computer prepared entries.

Please note, however, that automated brokers and importers are required to follow the procedure for non-automated entry preparation for those entries not prepared by computer.

Procedure for Non-Automated Entry Preparation

For Customs entry forms not prepared by computer, the broker or importer will be required to affix to the **original copy** of the document a pressure sensitive bar-coded label with the entry number (and check digit) pre-printed. See Attachment C-1 through C-5 for the requirements for placement of these labels on specific Customs forms.

Note: The broker or importer will still be required to type or write the entry number (with entry filer code and check digit) in the entry number block **so that it appears on all copies of the form.** For the CF 7501, the entry filer code will be shown outside and immediately to the left of block #1. See example on page 3.

Bar-coded Labels

Customs is implementing bar code technology for machine reading of entry numbers. Bar-coded entry numbers will be required on the revised CF 3461 (ALT) which will be used at certain Northern and Southern land border locations beginning on October 1, 1986. (See Revised CF 3461 (ALT) Entry/Immediate Delivery later in this instruction). Customs will also require a bar-coded representation of the entry number on the labels for all entry forms not prepared by computer.

A facsimile and technical specifications for the bar-coded label can be found in Attachment D.

Requirement for Two Labels

Where both the CF 3461 (Entry/Immediate Delivery) and a CF 7501 (Entry Summary) are filed for the **same entry number**, brokers and importers will be required to use two bar-coded labels, both with the same entry number, affixing one to the CF 3461 and the other to the CF 7501.

Only one label per entry number will be required in other situations such as drawback entries and:

1. Land border Entry/Immediate Delivery, Revised CF 3461 (ALT)

2. Consolidated Entry

A discussion of these two entry situations can be found later in the instructions.

Procedure for Lost or Destroyed Labels

There will be instances where it is not feasible to affix a label to a manually prepared CF 7501 Entry Summary. This situation could occur when the label for the CF 7501 is lost or destroyed subsequent to cargo release. Another example is where cargo release has taken place with a computerized entry document, and the broker or importer plans to file a computerized CF 7501, but it becomes necessary to file a manually prepared document.

A broker or importer has two options when the label is not available for the Entry Summary.

1. Include with the Entry Summary a copy of the CF 3461, CF 3461 (ALT) or other entry release document which shows the bar-coded entry number.

or

2. Type or print "LABEL UNAVAILABLE" on the CF 7501 in the area where the label would have been affixed.

Availability of Labels

These labels are commercially available, and may be ordered by providing the vendor with the entry filer code, check digit formula, (Attachment B), label specification (Attachment D), the quantity desired, and starting number. Single (one per number) or double (two per number) labels must be specified. Delivery time should normally be 2-4 weeks.

Procedure for Importers Without an Assigned Entry Filer Code

An importer without an assigned entry filer code, upon written request to the district director of Customs, may obtain a supply of pressure sensitive bar-coded labels with Customs assigned entry numbers.

These labels which will include the required check digits, will be for sale at Customs field locations. Customs Headquarters will arrange for an initial supply for each Customs district. Reordering will be the responsibility of Customs field offices.

These Customs supplied labels will carry an entry filer code which will identify a specific Customs district.

Entry Filer Code = CNN

C = Customs

NN = Customs district (or area) number

For example entry filer code C10 = New York, C27 = Los Angeles.

The entry numbers within each district will be assigned sequentially starting with 0000001, and **can only be used within the district for which they are assigned.**

Affected Customs Forms

The new entry number format will be shown on **all Customs documentation for which the current Customs assigned entry number is required.**

This includes the CF 3461 and revised CF 3461 (ALT), Entry/Immediate Delivery; CF 7501, Entry Summary; CF 331, Manufacturing Drawback Entry and/or Certificate; and CF 7539 J and CF 7539 C, Drawback Entry Covering Same Condition Merchandise.

The new entry number will be used for all entry types which require presentation of a CF 7501. This includes broker/importer prepared informal entries, warehouse, TIB entries, etc.

The new entry numbering system is **not being implemented at this time** for certain documents which currently are unnumbered or use various other numbering systems. These include the CF 7512C, Transporation Entry Manifest of Goods; CF 7512, Transportation Entry & Manifest of Goods Subject to Customs Inspection & Permit; and CF 5119A, Customs pre-numbered Informal Entry.

Revised CF 3461 (ALT) Entry/Immediate Delivery

Concurrent with implementation of this new entry numbering procedure, Customs is implementing a new entry/immediate delivery procedure at certain Northern and Southern border land locations using a revised CF 3461 (ALT). Brokers and importers with Customs assigned entry filer codes will be required to provide these forms with pre-printed bar codes and entry numbers.

Because the bar-coded entry number is pre-printed on the form itself, pressure sensitive labels **will not** be used on the CF 3461 (ALT). However, a bar-coded label with the same entry number will be required on the corresponding CF 7501 for forms not prepared by computer. Specific details will be provided in a separate issuance to brokers and importers in the affected locations.

Consolidated Entry

Where the Entry Summary (CF 7501) covers more than one release (i.e., a consolidated entry summary), assign a **new** entry number to the CF 7501 and record a "C" immediately following the entry number check digit in block #1 of the CF 7501 to indicate a consolidated entry summary. List the entry numbers used at time of release near the top of columns 28 through 36 of the CF 7501. **The entry number used on the CF 7501 for a consolidated entry summary must be different than the original release entry numbers.**

EXAMPLE: CF 7501

Entry Filer Code ——→ A65 | 1. Entry No. 0032614-1C

Port Code

Under the old entry numbering procedure, entry numbers were assigned and controlled by Customs based on port, but with the new procedure brokers and some importers will be assigning their own numbers.

With the implementation of the new entry numbering procedure, it is important that Port Code (block #5) on the CF 7501 Entry Summary be reported in strict accordance with Customs Directive 3550-03, CF 7501 Completion Instructions.

Record in block #5 of the CF 7501 the four digit code (Annex A of the TSUSA) of the port where the merchandise **is released for consumption or entry into warehouse**, regardless of whether the release occured as a result of an immediate delivery, entry or entry summary transaction.

Other Information

Failure to use the new entry number procedure starting October 1, 1986, **will result in entries being rejected by Customs.**

The new entry number **will not apply** to Entry Summaries (CF 7501) filed on or after October 1, 1986, **where entry was made prior to October 1, 1986** using the old entry numbering procedure.

Please contact Mr. William Nolle, Telephone (202) 535-4155 or Mr. Richard Bonner, Telephone (202) 535-4141 at Customs Headquarters, 1301 Constitution Ave., N.W., Room 4307, Washington, D.C. 20229, if there are any questions about this material or if additional information is needed.

Dated: July 2, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 85–16166 Filed 7–5–85; 8:45 am]

BILLING CODE [illegible]

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 316a

Residence, Physical Presence and Absence

Correction

In FR Doc. 85–15376 beginning on page 26547 in the issue of Thursday, June 27, 1985, make the following correction:

§ 316a.2 [Corrected]

On page 26548, first column, "§ 3165a.2" should have read "§ 316a.2".

BILLING CODE [illegible]

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 157 and 389

[Docket Nos. RM81–19–000, RM81–29–000]

Interstate Pipeline Blanket Certificates for Routine Transactions and Sales and Transportation by Interstate Pipelines and Distributors

Issued: July 1, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule: notice of effective date and OMB control number.

SUMMARY: On June 17, 1985, the Federal Energy Regulatory Commission issued a final rule in Docket Nos. RM81–19–000 and RM81–29–000, 50 FR 25,701 (June 21, 1985) extending its blanket transportation program. This notice states the OMB control number for §§ 157.209(e)(3) and (e)(4) promulgated by this final rule and the effective date of this rule.

EFFECTIVE DATE: July 1, 1985.

FOR FURTHER INFORMATION CONTACT: Thomas P. Gross, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357–8522.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act, 44 U.S.C. 3501–3520 (1982) and the Office of Management and Budget's (OMB) regulations, 5 CFR Part 1320 (1985), require that OMB approve certain information collection requirements imposed by agency rule. On June 28, 1985, OMB approved the information collection requirements of §§ 157.209(e)(3) and (e)(4) and issued Control Number 1902–0060 for that section. Therefore, the final rule in Docket Nos. RM81–19–000 and RM81–29–000 will become effective July 1, 1985.

PART 389—[AMENDED]

Accordingly, Part 389, Chapter 1, Title 18, Code of Federal Regulations is amended as set forth below:

1. The authority citation for Part 389 continues to read as follows:

Authority: Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520 (1982).

§ 389.101 [Amended]

2. The Table of OMB Control Numbers in § 389.101(b) is amended by inserting "§§ 157.209(e)(3) and (e)(4)" in numerical order in the Section column, and "0060" in the corresponding position in the OMB Control Number column.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 85–16120 Filed 7–5–85; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 142

[T.D. 85–112]

Customs Regulations Amendment Relating to Entry Numbers

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document informs the public of changes in the assignment and format of entry numbers used by the international trade community in submitting entry documentation for processing by the Customs Service. The changes are one of the numerous initiatives Customs has undertaken relating to the development of a comprehensive integrated Automated Commercial System. When fully implemented, the changes will ensure entry processing efficiency.

EFFECTIVE DATE: October 1, 1985.

FOR FURTHER INFORMATION CONTACT: Richard J. Bonner, Duty Assessment Division (202–535–4155), U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

SUPPLEMENTARY INFORMATION:

Background

Customs has undertaken numerous initiatives relating to the development of a comprehensive integrated Automated Commercial System (ACS). When fully developed, this system will provide an efficient means for accomplishing the current and future entry processing needs of Customs, other government agencies, and the international trade community. Currently, many formal entries received by Customs are prepared on computers. More international trade businesses are planning to use computers as part of automating the preparation of import documentation.

To ensure entry processing efficiency for both Customs and entry preparers, changes in the assignment and format of entry type codes and entry numbers are desirable.

Accordingly, by notice published in the **Federal Register** on January 13, 1984 (49 FR 1740), Customs proposed new procedures for both entry type codes and entry numbers and invited interested parties to submit comments. Although comments were received on both procedures, Customs published a final rule as T.D. 85–6 in the **Federal Register** on January 11, 1985 (50 FR 1499), which concerned only the changes to entry type codes. Those comments relating to the entry number proposal were still being analyzed. That analysis is now complete and the final changes to the entry numbers are the subject of this document.

Current Procedure

Customs entries are indentified by a 9-digit number in the following format:

FY–NNNNNN–C

FY represents the current fiscal year, NNNNNN is a sequential number, and C is a check digit computed from the first 8 digits.

For each fiscal year, Customs issues blocks of entry numbers to brokers and importers for each district and port. Issuing and controlling these numbers has become an administrative burden to Customs and the importing community. The issuance process at the beginning of each fiscal year is particularly time consuming and costly.

Discussion of Comments

Several of the seven commenters that responded to the notice raised issues pertaining to the proposed change to entry numbers. A discussion and analysis of these comments is as follows:

Attachment A

Comment: Customs must allow adequate implementation time for entry filers to make the necessary changes.

Analysis: Customs has considered and appreciates the time necessary for entry filers to make the necessary changes. Accordingly, the implementation date for the new entry number procedure is being delayed until October 1, 1985. This schedule allows both the trade and Customs adequate time for preparation.

Comment: Customs should assign separate entry filer codes at each location in which a broker or importer files entry documentation. An entry filer might also choose to combine certain offices under a single code while other districts have separate numbers.

Analysis: For Customs purposes, each business entity must be identified with a 3 character national entry filer code as part of the entry number. It should not be necessary to identify the filing locations by means of the entry number since the 4 digit Customs district/port code associated with all entries accomplishes this. Since entry filers have been given the flexibility to individually structure and allocate the 7 digits following the entry filer code in any convenient manner, the entry filer's organization or office location code can be included within the 7 digits.

Comment: Customs should calculate the entry number check digits and make them available to non-automated brokers and importers.

Analysis: To gain the maximum flexibility for the new entry number procedure, entry filers will necessarily take responsibility for assigning and controlling their own numbers. Since Customs cannot predetermine the range of organization of the numbers needed by individual entities, the entry filers, their data processors and forms producers must be responsible for check digit computation. The technical specifications related to computing the check digit and printing the number on the forms are available to brokers, importers, and forms suppliers upon request.

Comment: The numeric series of codes (000–999) should be reserved for use by airlines in order to be compatible with the existing 3 digit airline codes.

The formula for computing the check digit should include only the last 7 digits in order that it be compatible with the air waybill check digit used by airlines.

Analysis: Because the entry number is the basic method for storing and accessing data in the ACS, the accuracy rate for keying data to the system will be enhanced by assigning the numeric series of entry file codes to the largest category of users. Broker companies are the source of the majority of Customs entries. Therefore, it has been decided to reserve the numeric series of entry filer codes for broker companies and importers having significant entry volumes.

The check digit must be computed using the entire entry number including the entry filer code to ensure uniqueness and keying accuracy. Customs has decided to delay use of the entry number for in-bond transactions until analysis regarding the assignment of entry filer codes and the related check digit computation for carriers is completed. Carriers will not use the new entry number for in-bond entries at this time but will be required to use the new entry number for other types of entries.

Comment: One carrier proposed that the entry number format be expanded from 11 to 14 characters by including a 3 character alpha carrier identification code for air shipments.

Analysis: The 11 character entry number provides the largest volume entry filers with enough to last at least a decade without duplication. Expansion of the entry number by 3 characters would significantly increase data entry and computer storage cost for the trade, Customs, the Census Bureau and other Government agencies.

Comment: Blank or slash (/) should be used instead of the hyphen to separate components of the entry number. The placement of the hyphen on typewriter/data entry keyboards is more awkward and slower to use than is the space bar or slash key.

Analysis: Inasmuch as many of the entries presented to Customs are prepared on automated equipment, the separator character can be generated automatically without the need for keying. The hyphen separator is considered to be more readable than either the blank or the slash.

Accordingly, after consideration of all the comments and a further review of the matter, Customs has determined to adopt the amendments relating to entry numbers as follows:

New Procedure

For the past two years, Customs has been working with the trade community to develop a new entry numbering concept which is simple, flexible, and easy to manage. Customs has now completed the administrative details for implementing this concept. Accordingly, § 142.3a, Customs Regulations (19 CFR 142.3a), relating to the procedure for the assignment of entry numbers by Customs is being deleted. Beginning October 1, 1985, the new number, including hyphens, will be shown on entry documentation that currently requires the old (current) entry number. These include the Immediate Delivery Application (Customs Form 3461), the Entry Summary (Customs Form 7501) and the broker or importer prepared Informal Entry (Customs Form 5119A). Customs is also planning to implement use of the new entry number on other entry documents which currently are unnumbered or use various other numbering schemes. These include the pre-numbered Informal Entry (Customs Form 5119A) and the Transportation Entry (Customs form 7512). Use of the new entry number on these forms will not occur until after October 1, 1986, when Customs can complete development of these capabilities and add them to the ACS. New procedures such as these will also require coordination with the trade community. Specific details and technical specifications for the new entry number and its placement on Customs entry documentation will be available to entry preparers and forms printing companies in sufficient time to order the required forms and make necessary procedural changes.

The following format must be used when showing the new entry number:

XXX–NNNNNNN–C

XXX represents an entry filer code, NNNNNNN is a unique number which will be assigned by the entry filer, and C is a check digit computed from the first 10 characters.

An increasing number of Customs entries are now prepared by automated procedures. For these entries, Customs will require that the full entry number, including the filer code and the check digit, be printed in machine-readable format on the entry form. For non-automated entries, Customs will require that the entry number, including the filer code and the check digit, be pre-printed in machine-readable format on the entry form. The technical specifications related to computing the check digit and printing the number on the forms are available to brokers, importers, forms suppliers, and other interested parties by contacting Richard J. Bonner at Customs Headquarters (202–535–4155).

Entry Filer Code (XXX)

Entry Filer Code (XXX)

The entry filer code will be the only portion of the entry number that will be assigned and controlled by Customs. A unique 3 character (alphabetic, numeric, or alpha-numeric) code will be assigned to all licensed broker companies currently filing Customs entries. A code will also be assigned to importers currently filing a significant number of entries on a regular basis. The entry preparer will use this code nationwide as the beginning 3 characters of the number for all Customs entries, regardless of where the entries are filed. The entry filer code will replace the 3 digit importer/broker numbers currently assigned by Customs districts. An entry filer code assignment will not be made for intermittent importers. However, entry forms, pre-printed with a Customs assigned entry number, will be available for sale at local Customs offices. Brokers and importers who have not been notified of their entry filer code assignment by June 30, 1985, should immediately contact Mr. Bonner.

Entry Preparer Assigned Number (NNNNNNN)

For each entry, the entry preparer will assign a unique number. This number may be assigned in any manner convenient provided the same number is not assigned to more than one transaction. This number will not be associated with a fiscal year or a Customs district/port. The numbers need not be assigned or used in sequence.

As each entry is received, Customs will record the unique number assigned to the transaction, and will not allow the use of the same number on any subsequent transaction. A duplicate number will result in Customs rejecting the transaction.

Check Digit (C)

The entry preparer will compute the check digit using a formula provided by Customs. These specific details will be made available when the entry filer codes are issued.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601, *et seq.*), it is hereby certified that the changes set forth in this document will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Glen E. Vereb, Regulations Control Branch, Office of Regulations and Rulings, Customs Headquarters. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 142

Customs duties and inspection, Imports.

Amendment to the Regulations

PART 142—ENTRY PROCESS

1. The authority citation for Part 142 is revised to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

2. Part 142 is amended by removing § 142.3a.

William von Raab,
Commissioner of Customs.

Approved: June 13, 1985.

John M. Walker, Jr.,
Assistant Secretary of the Treasury.

[FR Doc. 85–16136 Filed 7–5–85; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 626, 627, 628, 629, and 630

Job Training Partnership Act and Targeted Jobs Tax Credit Programs; Lower Living Standard Income Level

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of determination of Lower Living Standard Income Level: correction.

SUMMARY: This is to correct errors contained in the document which set forth revised determinations of lower living standard income levels for the Job Training Partnership Act and Targeted Jobs Tax Credit Program, published at 50 FR 24306, June 11, 1985.

There were errors contained in Table 4 on page 24308. Therefore, we are hereby publishing a corrected Table 4 as set forth below.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Colombo, Telephone: 202–376–6093.

Accordingly, FR Doc. 85–14051, is amended by correcting Table 4 to read as follows:

TABLE 4.—70 PERCENT OF UPDATED 1985 LLSIL, BY FAMILY SIZE

Family size					
One	Two	Three	Four[1]	Five	Six
$6,340	$10,400	$14,280	$17,620	$20,800	$24,330
6,030	9,880	13,570	16,750	19,770	23,130
5,720	9,380	12,890	15,910	18,770	21,980
5,340	8,730	12,010	14,830	17,500	20,470
(4,890)	8,010	11,000	13,580	16,020	18,740
(4,810)	7,880	10,830	13,360	15,780	18,440
(4,720)	7,740	10,630	13,120	15,480	18,110
(4,700)	7,710	10,580	13,060	15,410	18,020
(4,670)	7,660	10,510	12,970	15,300	17,900
(4,630)	7,590	10,420	12,870	15,190	17,780
(4,620)	7,580	10,410	12,840	15,160	17,730
(4,590)	7,530	10,340	12,780	15,080	17,640
(4,560)	7,480	10,240	12,640	14,920	17,440
(4,510)	7,390	10,140	12,520	14,770	17,280
(4,470)	7,330	10,080	12,420	14,660	17,140
(4,460)	7,320	10,040	12,400	14,630	17,110
(4,430)	7,280	9,970	12,310	14,530	16,990
(4,420)	7,250	9,950	12,280	14,500	16,960
(4,390)	7,190	9,880	12,170	14,360	16,790
(4,370)	7,160	9,830	12,130	14,310	16,740
(4,360)	7,150	9,820	12,120	14,300	16,730
(4,350)	7,130	9,780	12,080	14,250	16,670
(4,330)	7,100	9,740	12,030	14,200	16,610
(4,320)	7,080	9,720	12,000	14,160	16,560
(4,290)	7,030	9,650	11,910	14,050	16,440
(4,280)	7,010	9,620	11,880	14,020	16,390
(4,180)	6,860	9,400	11,610	13,700	16,030
(4,170)	6,840	9,380	11,580	13,660	15,980
(4,150)	6,800	9,340	11,530	13,610	15,920
(4,110)	6,730	9,240	11,410	13,460	15,750
(4,100)	6,720	9,230	11,390	13,440	15,720
(3,950)	6,470	8,880	10,970	12,940	15,140

[1] Figures provided above in this notice are for a family size of four persons. To use this table, the appropriate figure should be found in the family size of four column. Then one may read across the row for family sizes other than four in the appropriate columns.

Signed at Washington, D.C., this 24th day of June 1985.

Roberts T. Jones,
Acting Deputy Assistant Secretary of Labor.

[FR Doc. 85–16083 Filed 7–5–85; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Ivermectin Paste

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Merck Sharp & Dohme Research Laboratories providing for additional uses of Eqvalan® (ivermectin) paste for treating and controlling certain parasites in horses.

EFFECTIVE DATE: July 8, 1985.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV-114), Food and Drug

CHECK DIGIT COMPUTATION FORMULA

Entry filer codes containing alphabetic characters must be transformed to a numeric equivalent prior to computing the check digit. The numeric equivalent for each alphabetic character is as follows:

A = 1
B = 2
C = 3
D = 4
E = 5
F = 6
G = 7
H = 8
I = 9

J = 1
K = 2
L = 3
M = 4
N = 5
O = 6
P = 7
Q = 8
R = 9

S = 2
T = 3
U = 4
V = 5
W = 6
X = 7
Y = 8
Z = 9

Example: Entry filer code B76 would transform to 276 for check digit computation purposes.

a. Using entry filer code B76 which transforms to 276 and a transaction number 0324527 as an example, the check digit is computed as follows:

Number for which Check Digit will be computed is 2760324527

b. Start with the units position and multiply every other position by 2. Essentially all odd positions will be multiplied by 2. Note: High order zeros are a significant element in the computation process and must be included in the transaction number. If the result of the multiplication is greater than 9, add 1 to the units digit of the result and disregard the tens digit.

Attachment B

Attachment B

$$\begin{array}{rrrrrrrrr}
7 & & 5 & & 2 & & 0 & & 7 \\
\underline{X2} & & \underline{X2} & & \underline{x2} & & \underline{x2} & & \underline{x2} \\
14 & & 10 & & 4 & & 0 & & 14 \\
\underline{+1} & & \underline{+1} & & \underline{+0} & & \underline{+0} & & \underline{+1} \\
5 & + & 1 & + & 4 & + & 0 & + & 5
\end{array}$$

c. Add the results.

$5 + 1 + 4 + 0 + 5 = 15$

d. Total all even positions starting with the position adjacent to the units position.

$2 + 4 + 3 + 6 + 2 = 17$

e. Add the sums from steps c and d.

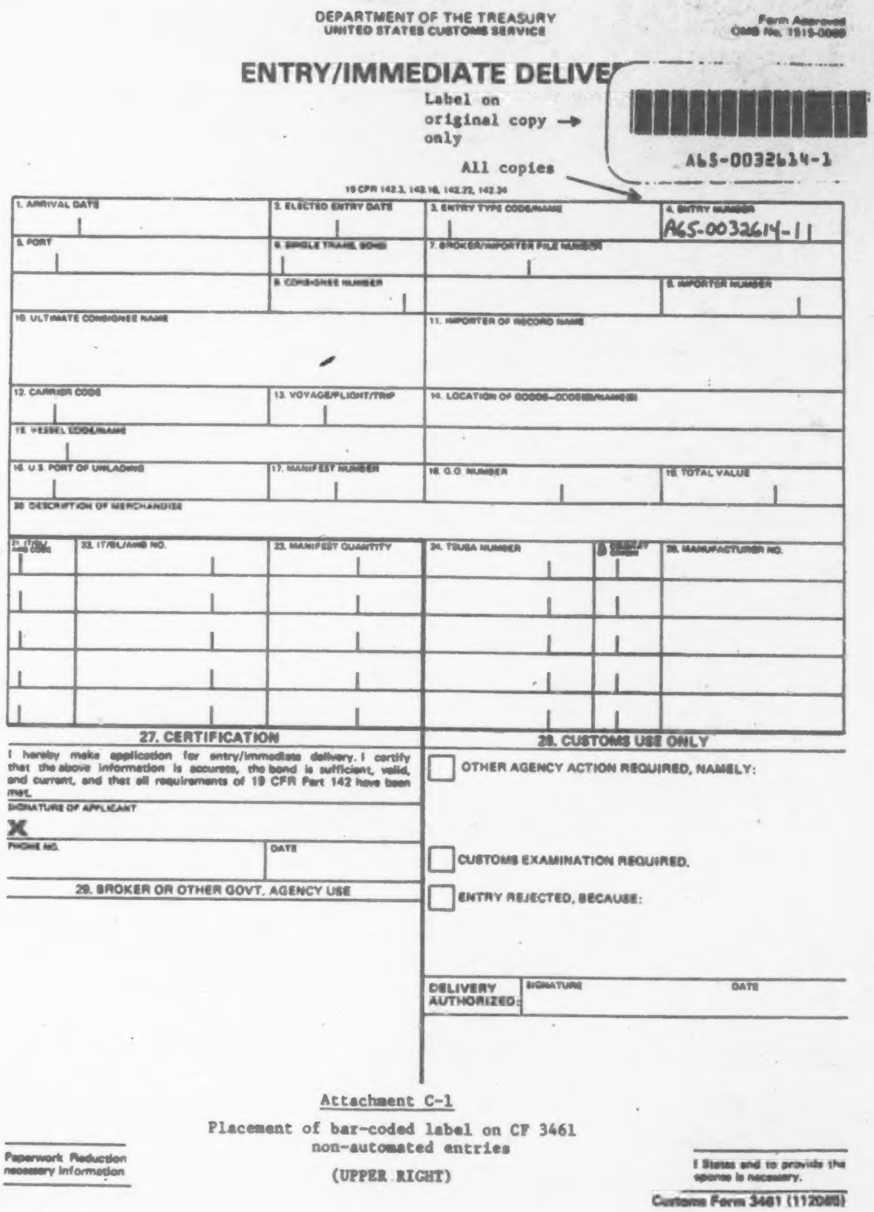
$15 + 17 = 32$

f. Subtract the units digit from 10. The result is the check digit.

$$\begin{array}{r}
10 \\
\underline{-2} \\
8
\end{array}$$

g. Normally, the result ot the arithmetic will be a single digit. In instances when the units digit from the sum in step e is a 0, the check digit will be 0.

The resulting entry number from the example would be shown as follows: B76-0324527-8



DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

Form Approved
OMB No. 1515-0069

ENTRY/IMMEDIATE DELIVE

Label on
original copy →
only

A65-0032614-1

All copies

19 CFR 142.3, 142.16, 142.22, 142.24

1. ARRIVAL DATE	2. ELECTED ENTRY DATE	3. ENTRY TYPE CODE/NAME	4. ENTRY NUMBER A65-0032614-11
5. PORT	6. SINGLE TRANS. BOND	7. BROKER/IMPORTER FILE NUMBER	
	8. CONSIGNEE NUMBER		9. IMPORTER NUMBER
10. ULTIMATE CONSIGNEE NAME		11. IMPORTER OF RECORD NAME	
12. CARRIER CODE	13. VOYAGE/FLIGHT/TRIP	14. LOCATION OF GOODS—CODE(S)/NAME(S)	
15. VESSEL CODE/NAME			
16. U.S. PORT OF UNLADING	17. MANIFEST NUMBER	18. G.O. NUMBER	19. TOTAL VALUE
20. DESCRIPTION OF MERCHANDISE			

21. IT/BL/AWB CODE	22. IT/BL/AWB NO.	23. MANIFEST QUANTITY	24. TSUSA NUMBER	25. [illegible]	26. MANUFACTURER NO.

27. CERTIFICATION

I hereby make application for entry/immediate delivery. I certify that the above information is accurate, the bond is sufficient, valid, and current, and that all requirements of 19 CFR Part 142 have been met.

SIGNATURE OF APPLICANT

X

PHONE NO.

DATE

29. BROKER OR OTHER GOVT. AGENCY USE

28. CUSTOMS USE ONLY

☐ OTHER AGENCY ACTION REQUIRED, NAMELY:

☐ CUSTOMS EXAMINATION REQUIRED.

☐ ENTRY REJECTED, BECAUSE:

DELIVERY AUTHORIZED: SIGNATURE DATE

Paperwork Reduction
necessary information

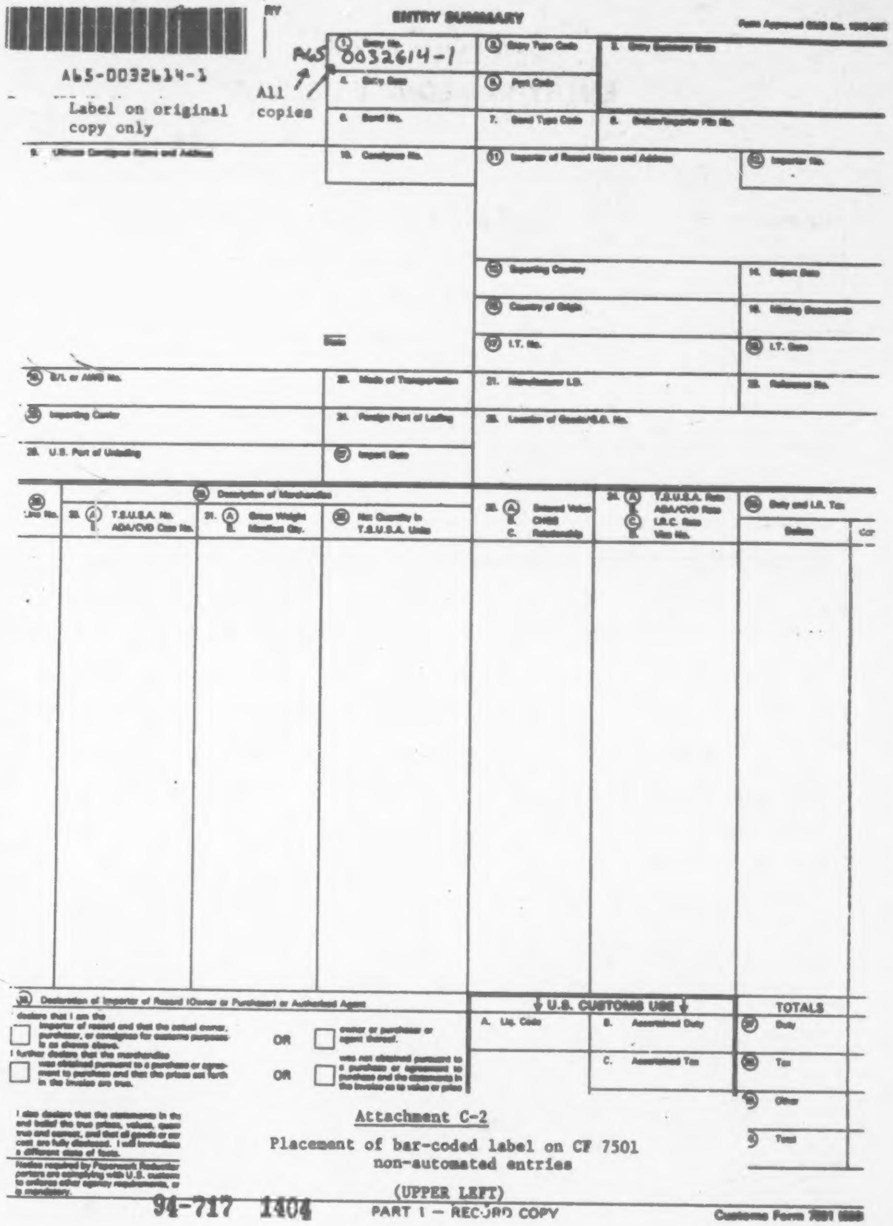
I States and to provide the
sponse is necessary.

Customs Form 3461 (112080)

Attachment C-1

Placement of bar-coded label on CF 3461
non-automated entries

(UPPER RIGHT)



A65-0032614-1

Label on original
copy only

All
copies

A65 0032614-1

ENTRY SUMMARY

① Entry No.

4. Entry Date

↓ U.S. CUSTOMS USE ↓

A. Liq. Code

B. Ascertained Duty

C. Ascertained Tax

TOTALS

Duty

Tax

Other

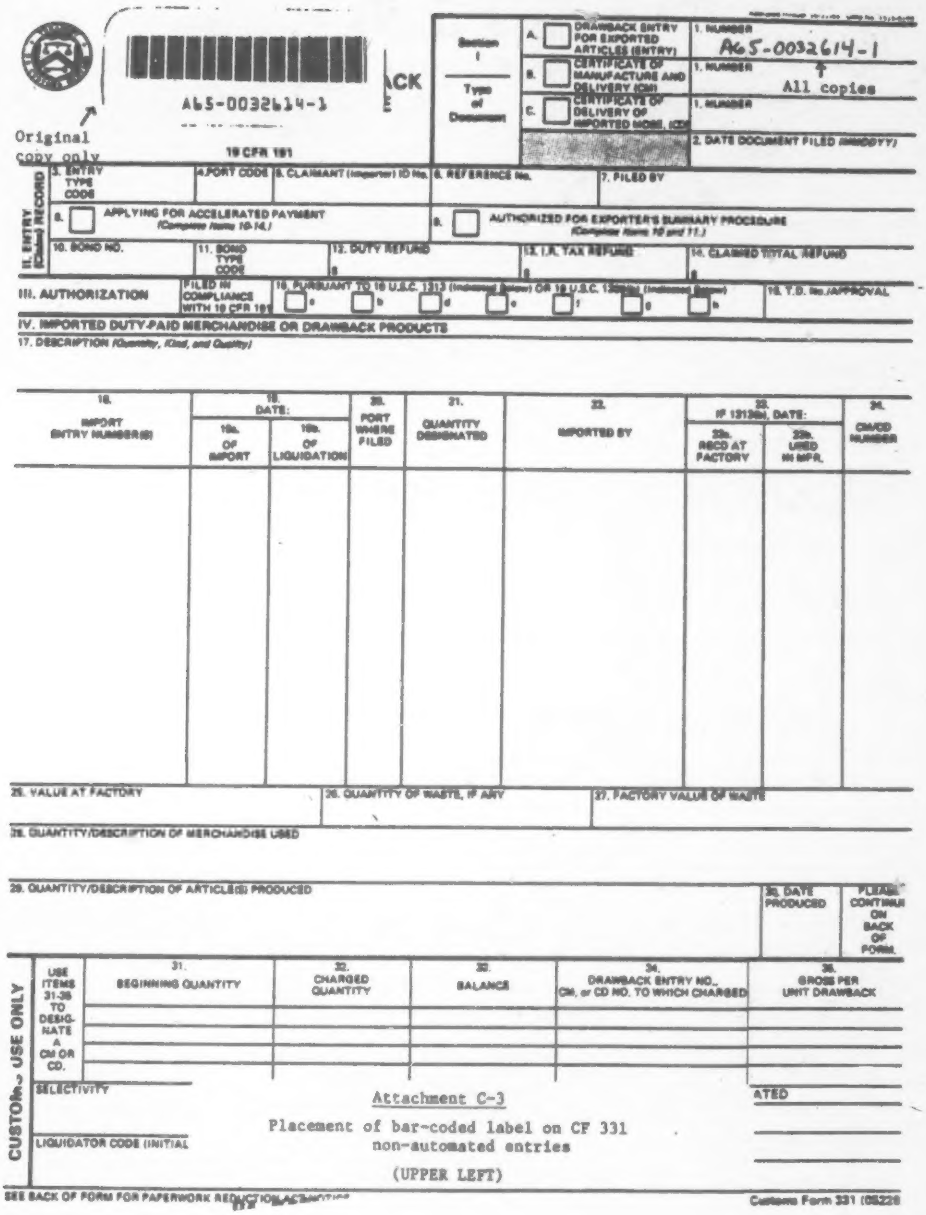
Total

PART 1 — RECORD COPY

Attachment C-2

Placement of bar-coded label on CF 7501
non-automated entries

(UPPER LEFT)



A65-0032614-1

Original copy only

ACK

19 CFR 191

Section I Type of Document	A. ☐ DRAWBACK ENTRY FOR EXPORTED ARTICLES (ENTRY)	1. NUMBER A65-0032614-1
	B. ☐ CERTIFICATE OF MANUFACTURE AND DELIVERY (CM)	1. NUMBER All copies
	C. ☐ CERTIFICATE OF DELIVERY OF IMPORTED MDSE. (CD)	1. NUMBER
		2. DATE DOCUMENT FILED (MMDDYY)

II. ENTRY (Claim) RECORD

3. ENTRY TYPE CODE	4. PORT CODE	5. CLAIMANT (Importer) ID No.	6. REFERENCE No.	7. FILED BY

8. ☐ APPLYING FOR ACCELERATED PAYMENT (Complete Items 10-14.)

9. ☐ AUTHORIZED FOR EXPORTER'S SUMMARY PROCEDURE (Complete Items 10 and 11.)

10. BOND NO.	11. BOND TYPE CODE	12. DUTY REFUND $	13. I.R. TAX REFUND $	14. CLAIMED TOTAL REFUND $

III. AUTHORIZATION

FILED IN COMPLIANCE WITH 19 CFR 191	15. PURSUANT TO 19 U.S.C. 1313 (Indicated Below) OR 19 U.S.C. 1309(b) (Indicated Below) ☐ a ☐ b ☐ d ☐ e ☐ f ☐ g ☐ h	16. T.D. No./APPROVAL

IV. IMPORTED DUTY-PAID MERCHANDISE OR DRAWBACK PRODUCTS

17. DESCRIPTION (Quantity, Kind, and Quality)

18. IMPORT ENTRY NUMBER(S)	19. DATE:		20. PORT WHERE FILED	21. QUANTITY DESIGNATED	22. IMPORTED BY	23. IF 1313(b), DATE:		24. CM/CD NUMBER
	19a. OF IMPORT	19b. OF LIQUIDATION				23a. RECD AT FACTORY	23b. USED IN MFR.	

25. VALUE AT FACTORY	26. QUANTITY OF WASTE, IF ANY	27. FACTORY VALUE OF WASTE

28. QUANTITY/DESCRIPTION OF MERCHANDISE USED

29. QUANTITY/DESCRIPTION OF ARTICLE(S) PRODUCED	30. DATE PRODUCED	PLEASE CONTINUE ON BACK OF FORM.

CUSTOMS USE ONLY

USE ITEMS 31-35 TO DESIGNATE A CM OR CD.	31. BEGINNING QUANTITY	32. CHARGED QUANTITY	33. BALANCE	34. DRAWBACK ENTRY NO., CM, or CD NO. TO WHICH CHARGED	35. GROSS PER UNIT DRAWBACK

SELECTIVITY

LIQUIDATOR CODE (INITIAL

ATED

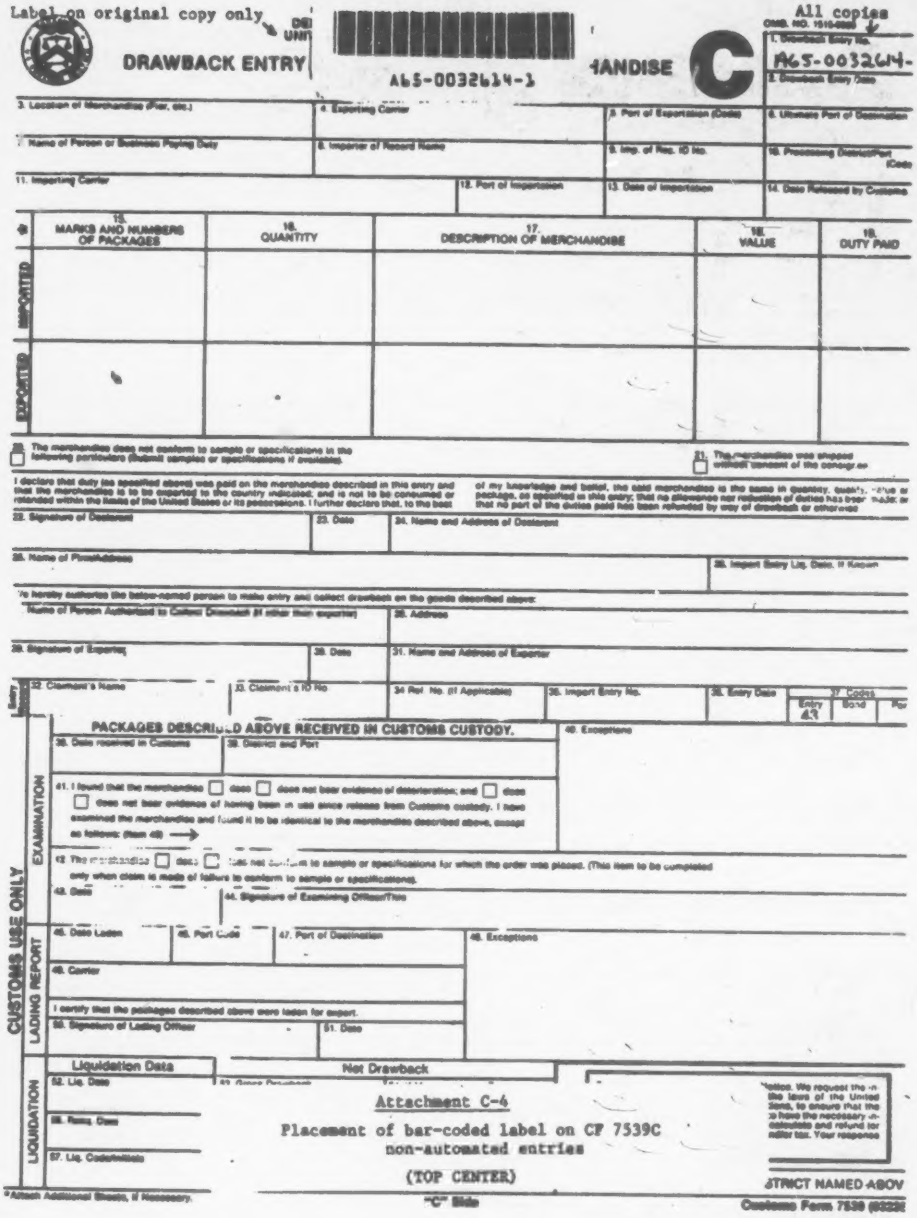
Attachment C-3

Placement of bar-coded label on CF 331
non-automated entries

(UPPER LEFT)

SEE BACK OF FORM FOR PAPERWORK REDUCTION ACT NOTICE

Customs Form 331 (05228



Label on original copy only

All copies

DRAWBACK ENTRY

A65-0032614-1

HANDISE

C

OMB. NO. 1515-0000

1. Drawback Entry No.

A65-0032614-

2. Drawback Entry Date

3. Location of Merchandise (Pier, etc.)

4. Exporting Carrier

5. Port of Exportation (Code)

6. Ultimate Port of Destination

7. Name of Person or Business Paying Duty

8. Importer of Record Name

9. Imp. of Rec. ID No.

10. Processing District/Port (Code)

11. Importing Carrier

12. Port of Importation

13. Date of Importation

14. Date Released by Customs

*	15. MARKS AND NUMBERS OF PACKAGES	16. QUANTITY	17. DESCRIPTION OF MERCHANDISE	18. VALUE	19. DUTY PAID
IMPORTED					
EXPORTED					

20. ☐ The merchandise does not conform to sample or specifications in the following particulars (Submit samples or specifications if available).

21. ☐ The merchandise was shipped without consent of the consignee

I declare that duty (as specified above) was paid on the merchandise described in this entry and that the merchandise is to be exported to the country indicated, and is not to be consumed or relanded within the limits of the United States or its possessions. I further declare that, to the best of my knowledge and belief, the said merchandise is the same in quantity, quality, value and package, as specified in this entry; that no allowance nor reduction of duties has been made; and that no part of the duties paid has been refunded by way of drawback or otherwise

22. Signature of Declarant

23. Date

24. Name and Address of Declarant

25. Name of Firm/Address

26. Import Entry Liq. Date, If Known

We hereby authorize the below-named person to make entry and collect drawback on the goods described above:

Name of Person Authorized to Collect Drawback (if other than exporter)

28. Address

29. Signature of Exporter

30. Date

31. Name and Address of Exporter

Entry Summary

32. Claimant's Name

33. Claimant's ID No

34 Ref. No. (If Applicable)

35. Import Entry No.

36. Entry Date

37. Codes

Entry 43

Bond

Por

CUSTOMS USE ONLY

EXAMINATION

PACKAGES DESCRIBED ABOVE RECEIVED IN CUSTOMS CUSTODY.

38. Date received in Customs

39. District and Port

40. Exceptions

41. I found that the merchandise ☐ does ☐ does not bear evidence of deterioration; and ☐ does ☐ does not bear evidence of having been in use since release from Customs custody. I have examined the merchandise and found it to be identical to the merchandise described above, except as follows: (Item 48) ⟶

42. The merchandise ☐ does ☐ does not conform to sample or specifications for which the order was placed. (This item to be completed only when claim is made of failure to conform to sample or specifications).

43. Date

44. Signature of Examining Officer/Title

LADING REPORT

45. Date Laden

46. Port Code

47. Port of Destination

48. Exceptions

49. Carrier

I certify that the packages described above were laden for export.

50. Signature of Lading Officer

51. Date

LIQUIDATION

Liquidation Data

52. Liq. Date

Net Drawback

53. Gross Drawback

56. Reliq. Date

57. Liq. Code/Initials

Notice. We request the in... the laws of the United ...tions, to ensure that the ...to have the necessary in... calculate and refund for ...ndlier tax. Your response

...STRICT NAMED ABOV

*Attach Additional Sheets, If Necessary.

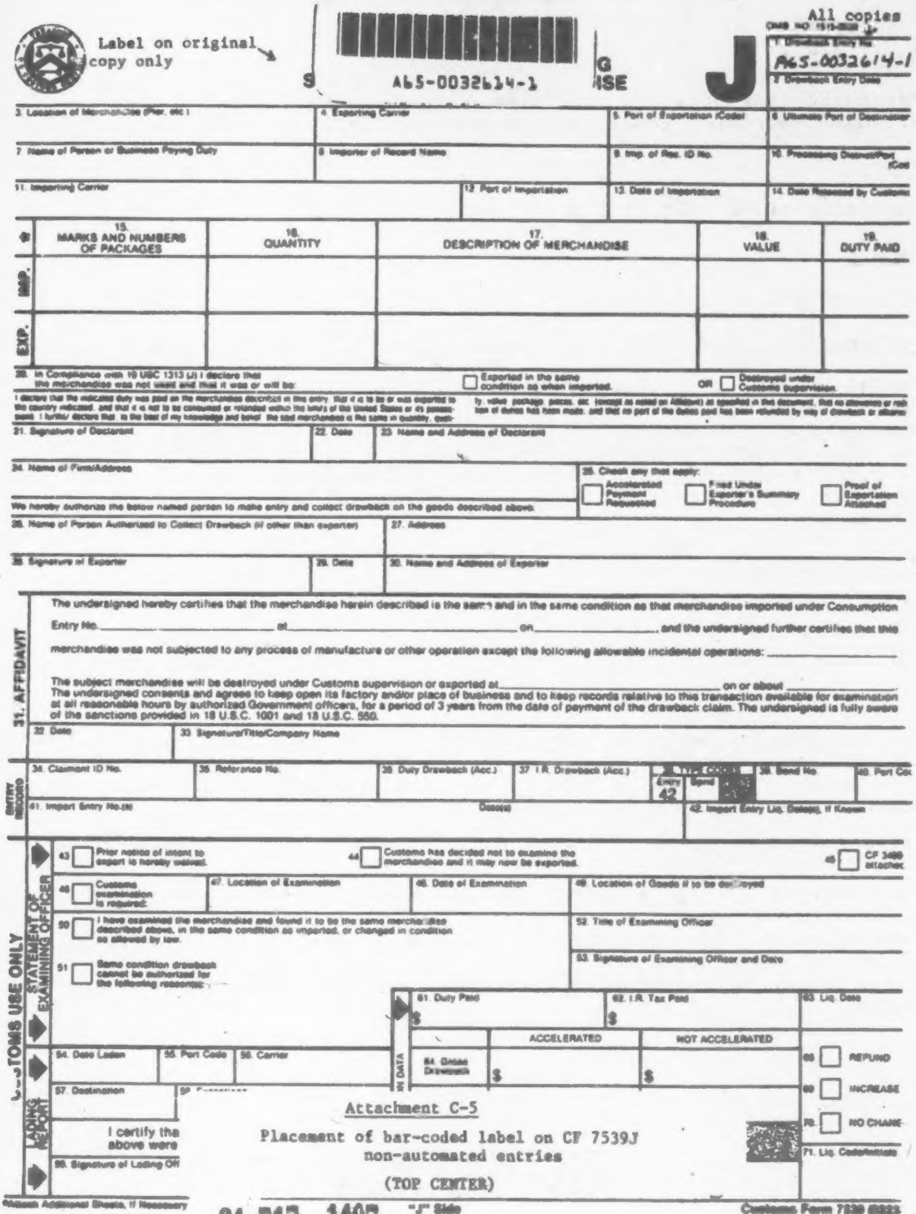
"C" Side

Customs Form 7539 (0322)

Attachment C-4

Placement of bar-coded label on CF 7539C non-automated entries

(TOP CENTER)



Label on original copy only

All copies

A65-0032614-1

S G ISE

J

OMB NO. 1515-0028

1. Drawback Entry No. A65-0032614-1

2. Drawback Entry Date

3. Location of Merchandise (Pier, etc.)

4. Exporting Carrier

5. Port of Exportation (Code)

6. Ultimate Port of Destination

7. Name of Person or Business Paying Duty

8. Importer of Record Name

9. Imp. of Rec. ID No.

10. Processing District/Port (Co

11. Importing Carrier

12. Port of Importation

13. Date of Importation

14. Date Released by Customs

	15. MARKS AND NUMBERS OF PACKAGES	16. QUANTITY	17. DESCRIPTION OF MERCHANDISE	18. VALUE	19. DUTY PAID
IMP.					
EXP.					

20. In Compliance with 19 USC 1313 (j) I declare that the merchandise was not used and that it was or will be: ☐ Exported in the same condition as when imported. OR ☐ Destroyed under Customs supervision.

I declare that the indicated duty was paid on the merchandise described in this entry; that it is to be or was exported to the country indicated, and that it is not to be consumed or relanded within the limits of the United States or its possessions. I further declare that, to the best of my knowledge and belief, the said merchandise is the same in quantity, quality, value, package, pieces, etc. (except as noted on Affidavit) as specified in this document, that no allowance or rebate of duties has been made, and that no part of the duties paid has been refunded by way of drawback or otherwise.

21. Signature of Declarant

22. Date

23. Name and Address of Declarant

24. Name of Firm/Address

25. Check any that apply: ☐ Accelerated Payment Requested ☐ Filed Under Exporter's Summary Procedure ☐ Proof of Exportation Attached

We hereby authorize the below named person to make entry and collect drawback on the goods described above.

26. Name of Person Authorized to Collect Drawback (if other than exporter)

27. Address

28. Signature of Exporter

29. Date

30. Name and Address of Exporter

31. AFFIDAVIT

The undersigned hereby certifies that the merchandise herein described is the same and in the same condition as that merchandise imported under Consumption Entry No. ______ at ______ on ______, and the undersigned further certifies that this merchandise was not subjected to any process of manufacture or other operation except the following allowable incidental operations: ______

The subject merchandise will be destroyed under Customs supervision or exported at ______ on or about ______. The undersigned consents and agrees to keep open its factory and/or place of business and to keep records relative to this transaction available for examination at all reasonable hours by authorized Government officers, for a period of 3 years from the date of payment of the drawback claim. The undersigned is fully aware of the sanctions provided in 18 U.S.C. 1001 and 18 U.S.C. 550.

32. Date

33. Signature/Title/Company Name

ENTRY RECORD

34. Claimant ID No.

35. Reference No.

36. Duty Drawback (Acc.)

37. I.R. Drawback (Acc.)

38. TYPE CODES Entry 42 Bond

39. Bond No.

40. Port Co

41. Import Entry No.(s) Date(s)

42. Import Entry Liq. Date(s), if Known

CUSTOMS USE ONLY

STATEMENT OF EXAMINING OFFICER

43 ☐ Prior notice of intent to export is hereby waived.

44 ☐ Customs has decided not to examine the merchandise and it may now be exported.

45 ☐ CF 3499 attached

46 ☐ Customs examination is required:

47. Location of Examination

48. Date of Examination

49. Location of Goods if to be destroyed

50 ☐ I have examined the merchandise and found it to be the same merchandise described above, in the same condition as imported, or changed in condition as allowed by law.

51 ☐ Same condition drawback cannot be authorized for the following reason(s):

52. Title of Examining Officer

53. Signature of Examining Officer and Date

61. Duty Paid $

62. I.R. Tax Paid $

63. Liq. Date

LIQ. DATA

	ACCELERATED	NOT ACCELERATED
64. Gross Drawback	$	$

68 ☐ REFUND

69 ☐ INCREASE

70 ☐ NO CHANGE

71. Liq. Code/Initials

LADING REPORT

54. Date Laden

55. Port Code

56. Carrier

57. Destination

I certify tha above were

59. Signature of Lading Off

Attach Additional Sheets, If Necessary

"J" Side

Customs Form 7539 (082

Attachment C-5

Placement of bar-coded label on CF 7539J non-automated entries

(TOP CENTER)

U.S. CUSTOMS BAR CODE LABEL SPECIFICATIONS

Label Type:

Permanent type pressure sensitive - once applied, label not removable without destroying label and bar code readability

Size:

Approximately 2 1/2" wide x 1" long

Paper:

60 pound white smudgeproof

Bar Code:

Medium density (6.5 characters per inch)
3 of 9 utilizing modulus 10 check digit - formula provided by U.S. Customs - Attachment B
Bar code to be in black ink (non-smear)
To conform with MIL-STD 1189A dated 1 August 1984
Bar code representation of the entry number should not include the 2 hyphens

Number Below Bar Code:

OCR-A

Format:

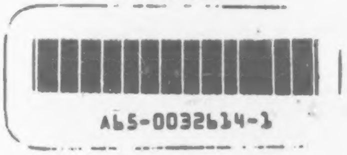
XXX-NNNNNNN-N (with hyphens)

XXX is alpha, numeric, or alphanumeric entry filer code (assigned by U.S. Customs) NNNNNNN is a 7 digit number with lead zeroes (leftmost high order digit must be 0,1,2,3 or 4) N is a modulus 10 check digit - formula provided by U.S. Customs (Attachment B)

Other Information:

Purchaser to specify starting NNNNNNN number (leftmost digit must be 0,1,2,3 or 4)
Labels can be ordered singly (one label per number) or in pairs (2 labels per number)
Bar code may be overprinted with firm name and logo in any standard color

FACSIMILE



A65-0032614-1

Bar code should only contain 11 characters. Do not include the 2 hyphens in the bar code itself.

Attachment D

BYRON L. DORGAN
NORTH DAKOTA

[illegible] CANNON BUILDING
WASHINGTON, DC 20515
(202) 225-2611

WAYS AND MEANS COMMITTEE

SUBCOMMITTEES:
OVERSIGHT
SELECT REVENUE MEASURES

Congress of the United States
House of Representatives
Washington, DC 20515

DISTRICT OFFICES
228 FEDERAL BUILDING
3D AND ROSSER AVENUE
P.O. BOX 2579
BISMARCK, ND 58502
(701) 250-4611 EXT. 618

110 FEDERAL SQUARE BUILDING
112 ROBERT STREET
P.O. BOX 1664
FARGO, ND 58107
(701) 237-5771 EXT. 5136

Questions to be submitted by the Honorable Byron L. Dorgan to the Honorable William von Raab, Commissioner of the U.S. Customs Service, for the September 27, 1988 hearing by the Subcommittee on Oversight

1. Mr. Commissioner, I am deeply concerned about what I see as insufficient staffing at Customs. For the past several years Congress has authorized and funded more staff than Customs has requested. The result of this staffing shortage is evident in my state of North Dakota. We have requested an additional Customs Enforcement Officer at the Fargo's Hector Airport, and are willing to pay for the additional staffing. The Customs District Director has consistently denied our request. Consequently, charter flights, such as friendship tours from Norway, must deplane in another state for international passenger clearance. With respect to cargo examination, only three border crossings are open 24 hours per day along a 300 mile border. This requires truckers and others to go many miles out of the way to cross.

Why should we make a plane bound for Fargo deplane in another state for clearance when the city and airport are clearly ready to pay for the additional staff?

Can you explain how such minimal and inadequate enforcement staffing at our ports of entry is not an impediment to international trade?

2. The City of Fargo informed me that Customs would not provide additional staffing at Fargo's airport, in part, because it did not provide adequate facilities for Customs personnel. The City of Fargo pays for one Customs position and the airport pays for office space, heating, lighting, and telephone service for Customs. The total cost is about $50,000 per year.

This Subcommittee has inquired to Customs exactly what your authority is to require ports to provide office space or to rehabilitate current facilities. You have failed to explain this adequately.

Mr. Commissioner, what kind of new facilities would be necessary at Fargo to change your mind?

Exactly what is your authority to make demands for such facility renovations as a prerequisite for providing the requested additional service?

24-Hour Border Crossing in the State of North Dakota

Although it is true that North Dakota has only three 24-hour land border ports of entry, it does have 15 additional ports that are open at least 13 hours per day.

For cargo processing purposes, these 15 ports are considered permit ports. This means that in order to import at a permit port, importers through their agents, licensed Customshouse brokers, make arrangements with the district director to import through a permit port. These permits are basically approved by the district director, if it would cause a hardship for the merchandise to be imported at other locations.

The Northern Border Program has not resulted in reduction of hours of service at any of our ports of entry. It does, however, enable us to concentrate our expertise, automation equipment, and efforts to improve cargo facilities at major cargo processing locations along the border. We do not look upon this as an impediment to international trade, but as prudent use of our resources.

This system is working well and in some cases has actually reduced the waiting time for Customs clearance at remote ports because, with prior approval, a trucker does not have to wait for a Customshouse Broker to drive to the port to present entry papers and to obligate his bond. We will, however, monitor the locations and, if conditions in the future warrant, we will reconsider the status of the border crossings in this state.

Briefing Paper on Fargo Facility

Fargo Hector International Airport was established as a reimbursable user fee airport on July 1, 1986. Under 19 CFR 122, as published in the Federal Register on March 31, 1988, user fee airports are "those which, while not qualifying for designations as international or landing rights airport, have been approved by the Commissioner of Customs to receive the services of Customs officers for the processing of aircraft entering the U.S. and their passengers." The services of the Customs officers are provided on a fully reimbursable basis.

Pursuant to 19 U.S.C. 58 (b) Customs has determined that the airports must be responsible for providing Customs with satisfactory office space, equipment and supplies, at no cost to the Government.

Customs maintains the right to establish the standards for these "adequate" facilities. The Guidelines for Federal Inspection Facilities at Airports was published in May, 1988, and provides specific guidelines for space requirements for conducting processing of aircraft and passengers. The guidelines were developed jointly by U.S. Customs, Immigration, Agriculture and the Department of State to ensure security and adequate operational requirements as well as the safety and comfort of arriving passengers.

Under 19 CFR 122.39 (a), procedures for landing at user fee airports are the same as those set forth in 19 CFR 122.34 (landing rights airports).

Authority for denial of landing rights is delegated to Regional Commissioners and District Directors under part 122 19 CFR. Customs attempts to accommodate landing rights requests. However, insufficient staffing of facility limitations are proper reasons for denying a landing rights request. When a denial is given, local FIS services discuss alternatives with the requesting airline representatives.

Recent correspondence between the District, Regional, and Headquarters offices, and Congressman Strangeland as well as the Fargo Chamber of Commerce indicate that Customs is unwilling to do so due to the inadequate facilities, regardless of the frequency of flights.

Specifically, Fargo Airport, including its newest facilities, have not been designed or modified for federal inspectional services use. The only proposal by the Fargo authorities for an FIS area is a "tug ramp" which is categorically unsuitable for our requirements and standards. They have come closer to a solution with a proposal to use a departure lounge. However, they have not, as yet, solved the problem of baggage transfer.

Once the facilities are modified according to the Federal Guidelines, and as agreed to in the Memorandum of Agreement signed by the Municipality of Fargo, Customs can provide inspectional stafffing.

MEMORANDUM OF AGREEMENT

Under the provisions of Section 236 of the Trade and Tariff Act of 1984 (P.L. 98-573), the Commissioner of Customs is authorized to designate airports at which Customs services may be made available on a fully reimbursable basis. The purpose of this Agreement is to designate the following airport (herein-after referred to as the Airport) as eligible for such services:

Airport Name: Hector International Airport

Location: Fargo, North Dakota

The above airport shall be considered to be the "person" using Customs services, as the term is applied in Section 236 (b) of P.L. 98-573. In accordance with the requirements of Section 236 (c) of the Law, a determination has been made that the volume of business anticipated at the Airport is insufficient to justify the availability of nonreimbursable Customs services at such Airport, and the Governor of the State in which the Airport is located has approved this designation.

Effective Date

This Agreement will become effective on July 1, 1986. The Agreement will continue in effect until terminated by either party.

Airport Responsibilities

The total reimbursement required for the first full year of operation will be $73,350. This includes salary and benefit costs, for one full-time inspector, relocation expenses, equipment and supplies, vehicles, training, vacation relief and overhead. These expenses will be determined in accordance with generally accepted accounting principles and standards. This amount will be billed in quarterly installments, commencing from the date on which the initial payment is due, which will be 15 days prior to the effective date of this agreement. All subsequent installment payments will be due 15 days prior to the beginning of the quarter during which the services are to be performed.

The anticipated cost of services for subsequent years is $50,112. This amount is lower than the initial year costs since the full amount of start-up cost for relocations and equipment will be absorbed in the first year. The succeeding year costs will be increased for all adjustments and changes in the rate of pay and allowances mandated by legislative and regulatory requirements. After the first full year of operation under this agreement, the Airport agrees to continue reimbursing the Customs Service for the full cost of services provided. These costs will be billed and payable in installments in accordance with the above terms.

The Airport also agrees to provide at no cost to the Customs Service, sufficient office space, utilities, office furniture, telephone, and miscellaneous supplies as may be necessary during the term of this Agreement.

Airport Operations

It is recognized that the Airport may be reimbursed for its expenses by the individual user of the services. The Airport agrees to set, and periodically review, its rates to other users of Customs Services to ensure that its charges are in accord with its expenses.

Customs Service Responsibilities

Regular Customs service will be provided 8 hours a day, ___ a.m. to _____ p.m., Monday through Friday. Any services outside the regular hours will be provided on an overtime basis. The full costs of overtime service will be paid by the requesting party in accordance with the rates prescribed by Section 451 of Title 19 of the United States Code, as amended.

Termination of Agreement

This Agreement may be terminated by either party upon 120 days notice to the other party. If any amounts due under this Agreement are not paid to the Customs Service timely, the Agreement will be automatically terminated. In the event of termination, all costs incurred by the Customs Service which have not been reimbursed will become immediately due and payable. Interest will accrue based on current U.S. Treasury borrowing rates.

Authorization

Agreement to these terms shall be indicated by the following signatures:

M T Williams
Airport Authority

May 23, 1986
Date

for Richard G. McMillen
Commissioner of Customs

May 23, 1986
Date

Guidelines

For Federal Inspection Facilities at Airports

Immigration

Public Health

Agriculture

Prepared by
U.S. Customs Service
U.S. Immigration and Naturalization Service
U.S. Animal and Plant Health Inspection Service
U.S. Public Health Service

Customs

1988 EDITION

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U.S. Department of Transportation
and United States Travel and Tourism Administration

FEDERAL INSPECTION SERVICES

- Commissioner of Customs
  U.S. Customs Service
  1301 Constitution Avenue, N.W.
  Washington, D.C. 20229
  Attn: Chief, Space Management Branch
  Phone: 202 566-5471

- Associate Commissioner, Management
  Immigration and Naturalization Service
  425 I Street, N.W.
  Washington, D.C. 20536
  Attn: Chief, Facilities & Engineering Branch
  Phone: 202 633-4448

- Plant Protection and Quarantine Programs
  Animal and Plant Health Inspection Service
  Federal Building
  Hyattsville, Maryland 20782
  Attn: Chief, Port Operations
  Phone: 301 436-8295

- Director, Division of Quarantine
  Public Health Service
  Center for Prevention Services
  Centers for Disease Control
  Atlanta, Georgia 30333
  Att: Chief, Program Operations Branch
  Phone: 404 639-2574

APPROVALS:

Facility planning and design approval shall be the joint responsibility of the USCS, APHIS, INS, and PHS. (Note: INS, in consultation with PHS, will represent PHS at locations where PHS has no staff assigned.) Headquarters addresses and phone numbers are shown above.

All approvals for USCS, APHIS, INS, and PHS shall be obtained from their national headquarters. Local representatives of these agencies are not authorized to grant final approval for drawings on new or remodeled facilities.

Prepared by the F.I.S. Facilities Guideline Committee, of the National Transportation Facilitation Committee.

For any revisions contact one of the above Agencies.

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AIRPORT FACILITY GUIDELINES

CHAPTER I

Introduction

1. Laws and Regulations

a. Immigration and Naturalization Service (INS)

The Immigration and Naturalization Service, Department of Justice examines all persons arriving in the United States to determine their admissibility under the provisions of the Immigration and Nationality Act (66 Statute 163). Section 239 of the Act (Title 8, U.S. Code 1229) and Part 239, Title 8, Code of Federal Regulations, pertain specifically to aircraft and airports of entry.

b. United States Customs Service (USCS)

The Customs Service, Department of the Treasury, is authorized to control the entrance and clearance of aircraft arriving in and departing from the United States and to inspect the crews, passengers, baggage, stores and cargo carried thereon (Tariff Act of 1930 and Section 1109 of the Federal Aviation Act of 1958). Customs enforces some 400 different laws for 40 other Agencies in protecting the borders of the United States.

c. Public Health Service (PHS)

The Assistant Secretary for Health, Department of Health and Human Services, is authorized to make and enforce such regulations as in his judgement are necessary to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the United States or its possessions (Section 361, Public Law 410, 78th Congress.)

d. Animal and Plant Health Inspection Service (APHIS)

APHIS provides inspection services for all aircraft, crew, passengers, stores, and cargo arriving from foreign countries into the United States, its territories and possessions or departing from Hawaii, Puerto Rico, and the U.S. Virgin Islands destined for the U.S. mainland. The purpose is to protect American agriculture by preventing the introduction of injurious plant and animal pests and diseases not previously known to occur in the United States (Plant and Animal Quarantine Acts- 21 U.S. Code 111, 7 U.S. Code 151 et seq.).

2. Purposes

Governmental procedures applicable to the clearance of aircraft, passengers, crew, baggage, and cargo arriving at airports are the outgrowth of United States law, administrative regulations, bilateral treaties and experience.

a. This pamphlet contains guidance material concerning the design of new or remodeled airport terminal building facilities to accommodate the Federal Inspection Services (FIS) for the inspection of international traffic in the United States and at preclearance, predeparture or preinspection sites outside of the contiguous United States.

The physical characteristics of the FIS area are discussed and delineated in terms of passenger and baggage flow and terminal building space utilization. The FIS have no authority over the construction of airports but are responsible for designating airports for international arrivals, approving the design of inspectional facilities, and providing inspectional services. Space for the processing of passengers and baggage arriving on international flights, as well as the required office space, inspectional booths and counters, conveyors, x-ray systems, etc., must be provided without cost to the FIS.

Appendix A, Sketch #1 shows a typical two-stop FIS facility flow diagram.

b. In making use of the guidance material contained on the following pages, it should be recognized that variations in local conditions may require special considerations to be incorporated into a facility at one airport but not another. For modification of existing facilities, the FIS agencies are willing to make accommodations. However, any adjustments to the specifications must be fully justified and not have an adverse effect on the missions of the FIS agencies. Use of this material by airport authorities in consultation with the FIS, airline representatives, and architects in the early stages of planning and during construction of the airport terminal building is imperative to ensure that all FIS requirements are met.

This is important not only so the FIS can perform their missions; coordination with the FIS in facility construction and design will also benefit the airport and the international carriers as they will realize improvements in processing times, greater security, and an opportunity to make better use of their facilities.

c. These guidelines include a chapter (Chapter IV) on preclearance inspection facilities located in foreign countries. There is also a chapter (Chapter V) on preinspection facilities located in foreign countries, and a chapter (Chapter VI) that deals with APHIS predeparture facilities located in Hawaii, U.S. territories and possessions.

CHAPTER II

BAGGAGE AND PASSENGER FLOW

1. General

The fundamental objective of airport terminal design is to enable passengers and baggage to proceed from aircraft to ground transportation in the most expeditious manner. The internal layout of international facilities should reflect this concern for the convenience of the passenger by providing simple and direct passenger and baggage flow routes through well designed facilities. There is an equal responsibility to enable the FIS to perform their mandated law enforcement roles in the most efficient and effective manner.

2. Sterile Waiting Areas for Continuing Passengers

At airports with sizeable transit passenger traffic continuing to a foreign country or another U.S. port of entry (progressive clearance), it is required that a sterile area be designed to ensure that there is no commingling of transit passengers (physical or visual) with any other passengers.

3. Passenger Flow

a. Strict segregation of deplaning passengers must be maintained to eliminate the possibility of items being passed from international passengers to the waiting public, or the bodily substitution of a disembarking passenger by a member of the waiting public. Between such time as the passengers disembark the aircraft and the time they exit the FIS area, stringent controls must be in place. In a terminal designed for international as well as domestic arrivals, there shall be two different flow routes for the disembarking passengers. Flow routes for deplaning international traffic should funnel into a common sterile corridor before entering the FIS area. Routing shall be so designed that there is no possibility of a crew member or passenger being able to circumvent the inspection area.

b. Passenger routing from the arriving aircraft through the sterile concourse to the FIS area should be as short and direct as possible. Any form of obstruction, including crossflow traffic, will not be allowed.

c. Multilingual signs and internationally recognized symbol signs to direct traffic shall be provided by the airport. Signs should be in keeping with the graphics design program of the individual airport. The FIS will be consulted regarding content requirements.

d. In a preclearance operation, the flow pattern of inspected passengers to the departure gates must be through an area that eliminates the possibility of items being passed to enplaning or transiting passengers or the bodily substitution of another person. No downstream shops will be allowed. The term downstream is defined as anywhere within the sterile FIS area.

e. The FIS area must be clearly separated by a physical barrier from domestic passenger facilities. In preclearance operations, the FIS area must also be segregated from other international flights.

f. Entrances and exits in the FIS area as well as in the sterile corridors must be controlled by use of alarm doors and alarm devices on any accessible windows or other exits. Any exits not related to fire safety must be locked during international arrival periods. Any access to domestic areas must also be secured. Alarms must sound at a central point within the FIS area. The location of any security breach must be identified on an indicator panel located in the FIS area. In new facilities, doors should be controlled by means of a computer system that will track keycard users, track the number of persons going through the door at a given time, and be capable of delivering an analysis of activity through a given portal. (At this time, Customs is still developing standards to address this issue. Once those standards are set, they will be incorporated into Customs requirements for facility security in Chapter VII.4.h.) All FAA security requirements must be incorporated in the FIS facility areas.

4. Baggage Security

a. Stateside -- Baggage shall be delivered from the aircraft to the claim area in a manner that precludes access by unauthorized personnel and/or mixing with domestic or interline baggage. A secure temporary storage facility close to the FIS area must be provided for baggage awaiting FIS inspection.

b. Preclearance -- After FIS clearance, checked baggage awaiting delivery to the departing aircraft shall be maintained in a sterile makeup area that is physically separated from all other baggage operations.

5. Baggage Facilitation

a. The arrival of baggage in the baggage claim area should coincide as nearly as possible with the arrival of passengers in the FIS area.

b. Baggage carousels or conveyors should be of variable speed to allow for canine and x-ray screening. Baggage carousels must be marked with carrier and flight number of arriving baggage.

c. The baggage claim area should be of ample dimensions to prevent impediment in the flow of passengers in the FIS area.

d. In the FIS area there will be no provision for additional airline processing such as on-line or interline baggage processing, ticketing or similar services.

e. Baggage carts should be provided by the airport or airlines for the use of passengers to facilitate movement through the inspectional process. A secure baggage cart return and delivery system must be provided and must meet all FIS security requirements. This system must not impede passenger flow or FIS processing. No skycaps or other non-authorized personnel will be allowed in the FIS area, except in special circumstances with FIS approval.

CHAPTER II

STATESIDE INSPECTION SEQUENCE

The approach from the aircraft to the FIS inspection area must be designed so that arriving passengers or crew members cannot bypass the inspection area or interact with persons not officially associated with the inspection area. The baggage claim and FIS inspection areas must be secure. The basic elements in the inspection areas are as follows:

1. INS Primary Inspection

After deplaning, the passengers move through the sterile corridor to the INS primary inspection queuing area. Here all foreign nationals and resident aliens must present themselves to an INS officer for primary screening. U.S. citizens will proceed to dedicated U.S. citizen queuing areas for processing.

2. INS Secondary Inspection

Passengers who require additional INS/PHS processing are referred to the INS/PHS secondary inspection area for further examination prior to retrieval of their luggage.

3. Baggage Claim

Upon completion of all required INS processing, the passengers move to the baggage claim area for retrieval of luggage. The baggage delivery system will be located between the INS primary inspection and USCS primary inspection areas. Once at the baggage claim area the passenger may encounter a USCS or APHIS roving inspector or an APHIS detector dog team. A determination may be made by the roving inspector(s) at this point to allow the passenger to exit the inspection area by way of the bypass lanes.

4. USCS Primary Inspection

After retrieval of their luggage, the passengers move to the USCS primary inspection queuing area for USCS/APHIS primary screening by a USCS officer. Passengers who have been released by a roving USCS inspector and not requiring additional processing go through the bypass lanes to the cashier or the exit.

5. USCS/APHIS Secondary Inspection

Passengers who require additional USCS/APHIS processing are referred to the appropriate designated secondary counter. Upon completion of the secondary examination the passenger will proceed to the cashier or the exit.

6. Exceptions

a. Advance passenger data may be sent to Customs by INS from those locations where INS has established preinspection or by the airline by means of a direct linkage with Treasury Enforcement Communications System (TECS) through passport data submission.

b. In those locations that receive flights that have direct electronic link with Customs to transmit advance passenger data providing name, date of birth, and/or passport number and country of issuance, a portion of the Customs processing area should be modified. The needs of the other FIS Agencies must still be met.

The modified Customs processing area should have the capability of being segregated from the regular arrivals area. It should have fewer primary positions, a separate baggage delivery system, and wider bypass lanes as it will be staffed primarily with roving inspectors. This will allow the roving inspectors to process passengers more expeditiously and also speed up the movement of both passengers and baggage. As passengers will be released more quickly from this area than in the other international arrivals areas, exits should also be wider.

c. In those locations receiving flights that have submitted advance passenger data, Customs will provide accelerated processing for passengers arriving on those flights based upon the enforcement risk factors involved. Roving inspectors will be used to process the majority of passengers rather than a conventional processing system where inspectors wait for passengers to come to them.

7. Cashier

The cashier's booth(s), should have sufficient queuing space, and shall be situated near the exit(s) in a manner so as to not obstruct the general flow of passengers.

CHAPTER IV

PRECLEARANCE INSPECTION SEQUENCE

1. Definition

Preclearance is defined as the full inspection of passengers and their baggage by the FIS at foreign ports. Precleared passengers are for the most ~~part~~ eligible to enter the United States without undergoing any other checks at the U.S. port of entry.

2. Approach to Inspection Area

Passengers to be processed through a preclearance facility first go to airline check-in. After check-in and completion of necessary FIS forms, all passengers and their baggage are directed to the FIS sterile area. Shops are not allowed in the sterile area as any purchases would require a reevaluation of the passenger's declaration or reinspection of any baggage by USCS. The area between the airline ticket counters and the Customs primary area must include:

a. Adequate queuing space.

b. Adequate space for Customs rovers to operate.

c. Sterility to prevent non-passengers into the Customs area.

3. USCS Primary Inspection

Once the passengers have completed their airline check-in procedures, they then present themselves to USCS. Upon completion of USCS primary screening, passengers not requiring additional USCS/APHIS processing proceed directly to the cashier or the baggage drop off area which will be immediately adjacent to the USCS processing area.

4. USCS Secondary Inspection

Passengers who require additional USCS/APHIS processing are then referred to the appropriate secondary counters. After completion of the secondary inspection, passengers proceed to the cashier or the baggage drop off area.

5. Baggage Delivery

Upon completion of Customs processing, passengers deposit their luggage onto the baggage conveyors. The luggage goes directly to a sterile holding area until ready for loading onto the departing aircraft. Movement of the baggage to the aircraft must be under such physical and procedural controls as is deemed necessary by the USCS to insure it sterility.

6. INS Primary Inspection

After USCS processing and dropping off checked baggage, the passengers go to the INS primary counters. Here they present themselves to an INS officer for primary screening. Passengers not requiring additional INS processing proceed to the sterile departure area.

7. INS Secondary Inspection

Those passengers requiring additional INS/PHS processing are directed to the INS secondary inspection area. After all INS/PHS processing is completed, passengers admitted to the U.S. go to the sterile departure area.

8. Sterile Waiting Area for Passengers

Upon completion of all FIS processing, cleared passengers remain in a sterile waiting area until time for boarding the aircraft. No downstream concessions are allowed in this area. Only authorized personnel will be permitted access to the sterile area.

9. Passage to the Aircraft

The enplaning of passengers and the loading of baggage must be accomplished in such a manner as to prohibit contact with unauthorized persons or objects as they proceed from their respective sterile areas to the aircraft. Loading bridges (jetways) and corridor security requirements are the same as those for FIS facilities located in the United States.

Appendix A, Sketch No. 2 shows a typical preclearance FIS facility flow diagram.

CHAPTER V

PREINSPECTION SEQUENCE

1. Definition.

Preinspection is defined as the inspection of passengers and their baggage by one or more, but not all, of the FIS at foreign ports. These passengers would have to undergo the remaining FIS inspection(s) at the U.S. port of arrival.

2. Approach to Inspection Area.

Passengers processing through a preinspection facility will flow with other airport traffic to the airline check-in counters. There, they will be issued the INS arrival/departure Form I-94 and Customs Declaration form, when required, and advised to complete them before entering the INS inspection area. Checked luggage will be deposited with the airline at this point. Passengers then proceed to the departure lounge where they will have access to duty free shopping.

3. INS Primary Inspection.

After completion of check-in procedures and any shopping the passengers may wish to do, they proceed to the INS inspection booths and present themselves and their completed documentation to the immigration inspector. Passengers who do not require additional INS processing proceed to the sterile departure area.

4. INS Secondary Inspection

Those passengers requiring additional INS/PHS processing are directed to the INS secondary inspection area. After completion of all INS/PHS processing, passengers admitted to the U.S. proceed to the sterile departure area.

5. Sterile INS Waiting Area for Passengers.

After completion of all INS inspections, passengers will proceed to a sterile INS departure lounge where they will remain until their flight is called for boarding.

6. Stateside Processing.

Upon arriving in the U.S., passengers who have been preinspected will proceed either to dedicated U.S. citizen lanes or to designated lanes for preinspected flights. After showing the stamped Customs Declaration card to the FIS inspector, passengers will proceed to claim their checked luggage. Passengers will proceed with their luggage to the U.S. Customs area for USCS processing, thus completing all necessary Federal Inspection procedures.

Appendix A, Sketch No. 2 shows a typical preinspection facility flow diagram.

CHAPTER VI

PREDEPARTURE SEQUENCE

1. Definition

Predeparture is defined as the clearance only for agricultural purposes at non-foreign offshore locations for aircraft, passengers and crew entering the contiguous United States or other possessions of the United States.

2. Predeparture Clearance Process

A predeparture clearance for agriculture purposes is presently carried out at non-foreign offshore locations in Hawaii, Puerto Rico, and the U.S. Virgin Islands. This clearance includes examination of passengers' baggage, cargo and the aircrafts' quarters, stores and cargo pits. Such inspections in Hawaii and Puerto Rico are conducted solely by APHIS personnel. At airports where this predeparture inspection is required, adequate examination counters, (configured to support x-ray systems where required by APHIS),queuing space, checked baggage security, and accompanying office laboratory facilities must be provided. Details regarding these requirements can be obtained from APHIS.

Planning must be initiated at an early stage with APHIS since human resources may determine the amount of flexibility APHIS can allow. Multiple inspection points within a facility must have prior approval from APHIS headquarters.

CHAPTER VII

OTHER FIS DESIGN REQUIREMENTS

1. General Design Information

a. In numerous instances, international passenger volume has rapidly outgrown terminal facilities. The likelihood of this occurring can be reduced when planning new facilities by using the annual Federal Aviation Administration Aviation Forecasts of projected peak traffic increases for a five- or ten-year period.

b. It is fully recognized that at the time of construction, it may be unnecessary or economically undesirable to initially build a terminal that will meet long term passenger volume projections. In these circumstances, the initial plan should take into account the need for future expansion. Any additions to the terminal can then be carried out without interfering with the daily operation in the existing facilities.

c. Where practicable, local facilitation committees made up of representatives of each FIS Agency, airlines, and airports may be helpful in assuring that an optimum building layout, including aesthetic considerations, will be achieved wherever a new or redesigned airport terminal facility is to be constructed. Where such a local committee does not exist, airport authorities and other interested parties might find it helpful to form a local group for advisory services of this kind.

Representatives of the national headquarters of the FIS are also available to participate in preliminary planning and, in fact, must be consulted before any FIS approval can be confirmed. Preliminary plans should be submitted to the respective national headquarters of the FIS and their architectural staffs for review before definitive drawings are started. See frontispiece for approval requirements for definitive drawings.

2. Specific Design Criteria

a. Adequate glare-free lighting shall be provided at inspection points and in examination/search rooms, preferably indirect lighting of not less than 90 foot-candles. Adequate air conditioning and heating for the entire FIS facility must be provided.

b. FIS facilities should normally be confined to one floor of the terminal building, preferably on the same level where the passengers deplane. Convenient access to the ground transportation vehicle loading platform on the street-side of the terminal is highly desirable. These provisions must meet all handicap requirements.

c. All main passenger exits leading out of the FIS area shall be situated in such a manner so as to prevent visitors from observing the inspection process. The exit(s) will consist of at least one set of double doors that open outward, preferably of an automatic type. These doors shall be located to facilitate the flow of passengers out of the area. The flow of the cleared passengers should not be impeded by the congregation of persons awaiting their arrival immediately outside the exit doors. This is best accomplished by incorporating a buffer area in the design of the facility. The baggage transfer belt should be situated after the exit from the FIS area but before the visitors waiting area.

d. All doors which will serve as emergency exits must be equipped with alarm exit locks having a crowd release bar. These alarm doors must sound at a central point in the FIS complex as well as appear on a schematic indicator panel when the release bar is activated. The doors should be equipped as previously described in Chapter II, Section 3.f. Keycards will be assigned to a specific airline or user within the airport who is responsible for all use of the card. Any keycards assigned to an airline are the sole responsibility of the entity to whom the card was assigned. Battery operated alarms are not acceptable on the emergency alarm exit locks. Exits for passengers from the FIS area in an emergency situation should be into an area which can be controlled. The number of exits from the FIS area should be limited to the minimum required by local fire and safety codes. Baggage belt controls providing access to the FIS area should be secured in a manner sanctioned by the District Director of Customs.

e. Adequate queuing space must be provided for arriving passengers in the INS primary inspection area as well as in the USCS primary inspection area. There should be at least 70 feet but preferably 90 - 100 feet of queuing space in front of both INS and USCS primary inspection booths.

f. Sufficient numbers of dedicated U.S. citizen inspection lanes must be provided in the INS primary inspection area to allow arriving U.S. citizens and preinspected passengers to flow more quickly through primary inspection areas. Bypass lanes must be incorporated into the design of the USCS inspection area to facilitate the flow of passengers inspected by rovers or not requiring USCS or APHIS secondary inspection.

g. An elevated command module should be strategically placed so as to allow FIS supervisors to monitor all activities in the FIS area.

h. A closed circuit television system should be installed. Cameras are to be placed in all areas of concern to the FIS agencies. Those areas include loading bridges, sterile concourses, baggage delivery areas, tarmac and throughout the FIS inspection area. The monitors should be located in the elevated command module.

i. If a visitors waiting room is provided, it should be of sufficient distance from the FIS exit(s) so as not to impede passenger egress. The room should be of adequate size to house the normal volume of visitors. As visitor/passenger ratios vary among airports, local officials are advised to make a visitor/passenger ratio study before the waiting room is designed.

j. If public toilets are provided for deplaning passengers, they must meet FIS security requirements and be located prior to the INS inspection area.

k. No public telephones are to be located in the FIS area.

l. The advanced passenger data may be sent to Customs by INS in those locations where INS has established preinspection or by the airline by means of a direct linkage with TECS through passport data submission.

m. If a baggage cart return and delivery system is implemented, it must not impede passenger flow or FIS processing and must meet all FIS security requirements.

3. Immigration and Naturalization Service

a. Primary Inspection Booths. Configuration of primary inspection booths is a piggyback positioning with the number of booths necessary determined by estimated passenger loads. Primary booth specifications may be obtained from INS.

b. Off-Line Secondary Inspection Waiting. Secondary inspection counters, interviewing room or rooms and a waiting area shall be provided.

c. General Office. Office space to accommodate inspectors while not at inspection counters is required. At a minimum there shall be one desk space per primary inspection booth and secondary position (see Appendix B).

d. Automated equipment room. This room shall be lockable, with conduit connections for computer terminals to the primary and secondary inspection booths. This facility shall be provided by the airport authority.

e. Detention Rooms. Two detention/holding rooms, one for males and one for females, should be constructed in close proximity to the secondary area. Each holding room should have a heavy-duty door with a small window for observing detainees. These rooms should include appropriate restroom facilities.

f. Lab Equipment Room. This room should be in the secondary area and should be lockable. It will require electrical outlets for high intensity lighting and other equipment.

g. Supervisor(s) Office. This office should be situated so that supervisor can view the primary inspection area through a clear glass-paneled wall.

NOTE: Assistance in planning for this area, as well as the Public Health Service area, including booth and counter standards, is available from INS.

4. U.S. Customs Service

a. Primary/Secondary Inspection Booths/Counters;

1. Configuration of primary inspection booths is dependent on philosophical as well as practical considerations. The two options available are side by side and piggyback positioning.

2. Treasury Enforcement Communications System, (TECS): Each USCS primary inspection counter houses a cathode ray tube (CRT) unit, a keyboard which accesses TECS and a passport reader. The rear of the secondary inspection counters houses a high-speed printer which is connected to the CRT. This equipment is usually supplied, installed, and maintained by USCS; however, provision for electrical/signal line hookups must be provided free of charge as part of the facilities construction.

3. The Customs secondary inspection counters are located directly behind the Customs primary inspection area. The use of stainless steel counters is acceptable.

4. A visual signaling system which can be activated by an inspector at any primary or secondary location shall be provided in a conspicuous location. The signal should be visible from the exit side of the secondary inspection counter as well as in the supervisor's office.

5. An intercom system should be provided to facilitate communication between FIS primary, secondary areas, supervisor's offices and the command module.

6. At preclearance sites a call button or similar arrangement must be provided so that FIS officers can summon assistance from the local enforcement authority.

b. Searchrooms

At least two searchrooms are required within close proximity of the USCS secondary inspection area. These rooms will be a minimum of 80 square feet each and will be located beyond the inspection area. In order to insure the safety of the USCS officers, each room will be equipped with a push button that activates a buzzer and a call light for use in emergency situations. The door will open outward. The room will be equipped with a table without drawers, and a bench which will be anchored or bolted to the floor or wall. It will be devoid of any unsecured objects that can be used as weapons and will not have windows. Solid ceilings are required.

c. Cashier's Booths

At airports where USCS cashiers are to be employed, a booth shall be located near the exit door but in such a position that it will not cause congestion at the exit area. The booth should be large enough to accommodate two cashiers with adequate heat, ventilation and light. A phone jack for a touch tone telephone must also be provided.

d. Office Area for USCS Supervisors.

The principal office should be located in the USCS inspection area to enable the supervisors to directly observe the entire USCS area from inside the office. An audio/visual indicator panel linked to USCS primary and secondary inspection areas should be located in this office. There should be no means of access to this office by the general public (as distinguished from the arriving passengers). At high volume airports, where it is necessary to have an airport director or officer-in-charge, additional office space shall be provided for him/her and a secretary. Additional office space may be required for use by first line supervisors.

e. General Office Area

There should be some means of access by the general public (as distinguished from arriving passengers) and airline representatives to the USCS office without passing through the inspection area. This is to facilitate the registration of personal effects, requests for Customs information or claiming or unaccompanied baggage, as well as provide for the entrance and clearance needs and requirements of the airlines.

f. Vault

A security vault shall be located in the USCS office area at major airports. Vaults for storage of seized articles shall be of substantial construction with a steel door and combination lock. The walls, floors and ceiling shall be at least eight inches of steel-reinforced concrete or its structural equivalent. The door and frame unit shall have the following specifications:

1. Thirty man-minutes against surreptitious entry.

2. Twenty man-minutes against forced entry.

3. Twenty man-hours against lock manipulation.

4. Twenty man-hours against radiological techniques.

At smaller general aviation airports a permanently affixed steel safe with a combination lock is required. (Customs is currently reviewing these requirements; as a consequence, they may be altered.)

g. Agent Space

At airports where Customs agents are assigned, adequate office space will be provided for the number of officers assigned and should include lockable cabinetry to store service weapons.

h. Security Requirements

The security of the FIS area is essential to insure the integrity of the baggage inspection as well as the safety of all FIS officers and arriving passengers. Necessary structural improvements needed to meet these requirements shall be included in the plans. Basic security requirements are as follows:

1. Visual or physical contact will not be allowed by waiting friends and relatives with arriving passengers until after FIS processing. New facilities shall have no glass partitions whatsoever incorporated into its design. In existing facilities, clear glass partitions shall be painted or frosted or otherwise covered to ensure privacy of the baggage examinations.

2. Appropriate measures should be taken to eliminate any visual contact by friends, relatives or associates of enplanning or deplaning passengers.

3. The FIS area is a restricted area and may be used only for processing passengers. No airline interline counters, baggage transfer belts or counters for commercial transactions are to be located within this area. Baggage carts should be provided by the airport or airlines as no skycaps will be allowed in the FIS area.

4. A visual signaling system will be installed to enable the inspector to signal for assistance. These lights should not be readily visible to the passengers.

5. Access to the FIS areas as defined in Title 19, Code of Federal Regulations, Part 6, Section 12 (a) will be controlled by the USCS. All persons located at, operating out of, or employed by any airport accommodating international air commerce, or its tenants or contractors, including air carriers will be allowed uncontrolled access only after his/her application for the USCS security seal has been approved.

5. Public Health Service

a. PHS will require office space (see Appendix B) and an isolation area. It is imperative that the PHS office, especially the isolation area, be located contiguous to the FIS inspection area. The isolation area shall consist of an anteroom with a lavatory and shower, an isolation room, and an adjacent private toilet with shower, water closet and lavatory.

b. Air supply (heating and cooling) to the office area and the entire isolation area may be provided by the facility ventilation system. However, the exhausted air from this area shall be vented directly to the outside (without recirculation within the area or facility by separate exhaust fan).

c. Primary Inspection Booths. PHS will require primary inspection booths, in the INS primary inspection area, at all airports that receive refugees. Booths shall be of similar construction as the INS booths.

6. Animal and Plant Health Inspection Service

a. APHIS inspectional personnel examine cargo and aircraft for agricultural pests and for items of agriculture interest and conducts secondary passenger baggage inspections for prohibited or regulated agricultural material.

b. Office Area

The space and facilities from which APHIS operates as shown in Appendix A, must be located adjacent to the baggage inspection area. The office must have physical and visual access to the baggage inspection area. A clear glass panel (not floor to ceiling) with venetian blinds is required in the wall between the office and the baggage inspection area. An audio/visual indicator panel linked to USCS primary and secondary inspection areas should be located in this office. At high volume airports, where it is necessary to have an airport officer-in-charge, additional office space shall be provided for him/her and a secretary. Additional office space is required for first line supervisors. A flight information system approved by local APHIS management will be necessary to provide aircraft boarding support. Locations which are, or will be, utilizing detector dog teams must provide a small climate controlled room to place the detector dog in during rest periods and/or down-time.

c. Laboratory Requirements

The APHIS office area and laboratory shall ordinarily be separated with a full partition and a door. There shall be access to the laboratory from the aircraft boarding area to enable secure movement of contraband from the aircraft to the laboratory. Adequate lighting and electrical outlets are required. The special equipment that must be provided as part of the APHIS laboratory space consists of the following:

(1) Double drainboard and stainless steel sink.

(2) Undercounter storage cabinets.

(3) Commercial type heavy-duty garbage disposal unit (the size requirement based on peak hour passenger criteria).

(4) Toilet facilities with shower. (male and female)

(5) Counter top work space for microscopes etc.

d. Secondary Inspection Booths/Counters

APHIS will be provided secondary inspection counters in conjunction with the Customs secondary inspection counters. The counter configuration will be designed to support secondary x-ray screening systems at locations designated to include x-ray systems in the facility. Names of locations that have been designated to include x-ray systems can be obtained from the APHIS office listed on frontispiece. Non-designated locations will have counters for secondary inspection. The counters should be the same as Customs' secondary counters. Modified Customs processing areas (see page 6) do not preclude other Agency requirements and must still contain APHIS secondary inspection facilities.

e. Approval Requirements for Garbage and Refuse Disposal Facilities:

APHIS approval of proposed projects is subject to availability of adequate international aircraft garbage and refuse disposal facilities. Adequate facilities consist of either an incinerator, garbage cooking or sterilizing apparatus, or equipment that grinds garbage and refuse for discharge into an approved sewage system. The system or combination of systems selected must be capable of handling on a daily basis all the garbage and refuse from arriving international carriers. The sewage system utilized by the airport as well as the method of collection and transport of the garbage and refuse must also be approved by APHIS. Disposition of any part of foreign garbage at landfills will not be approved unless it has first been processed in an acceptable manner. Without approved garbage handling facilities, no galley cleaning or catering will be allowed, and aircraft must move after passenger disembarkment to an approved airport or foreign destination.

7. FIS Employee Requirements

Separate facilities for employees of each of the FIS agencies shall be provided. The space must be in close proximity to the office space provided the respective agencies as well as to the passenger processing area. This requirement guarantees accessibility for the employees and will minimize potential passenger processing delays.

a. Employee Locker Rooms

Rooms shall be provided for male and female employees and shall be of sufficient size to permit one locker for each full-time inspectional employee assigned to passenger processing. Additional lockers for part-time employees should also be provided.

b. Employee Toilets

Men's and women's toilets will be provided for employees of each agency and must not be accessible for public use.

c. Lunch/Break Room

Rooms will be provided for the inspection personnel and will be equipped with a counter type sink. Adequate space must also be provided for the installation of a stove and refrigerator.

d. Conference/Training Room

Facilities will be provided at major airports for meetings and training of inspection personnel.

APPROVALS:

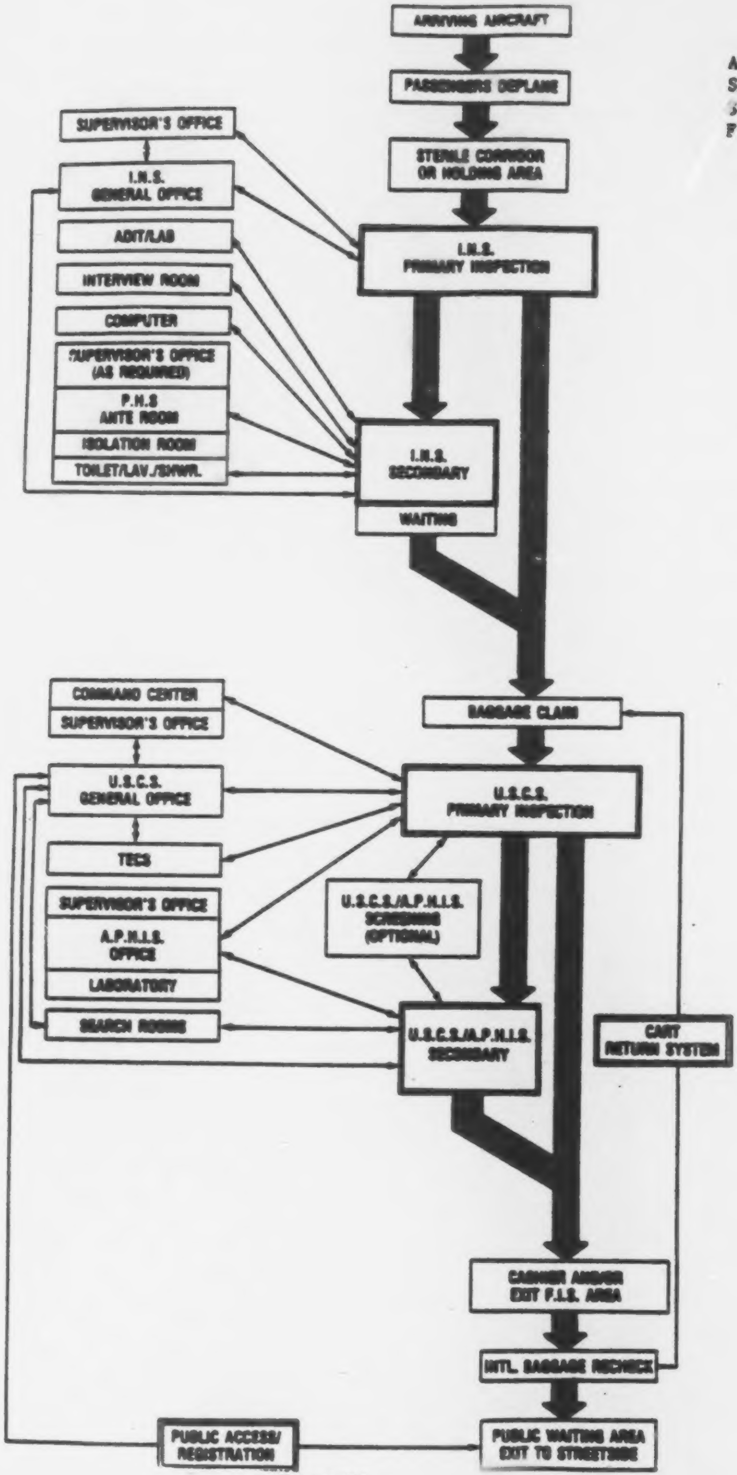
Facility planning and design approval shall be the joint responsibility of the USCS, APHIS, INS, and PHS. (Note: INS, in consultation with PHS, will represent PHS at locations where PHS has no staff assigned.) Headquarters addresses and phone numbers are shown above.

All approvals for USCS, APHIS, INS, and PHS shall be obtained from their national headquarters. Local representatives of these agencies are not authorized to grant final approval for drawings on new or remodeled facilities.

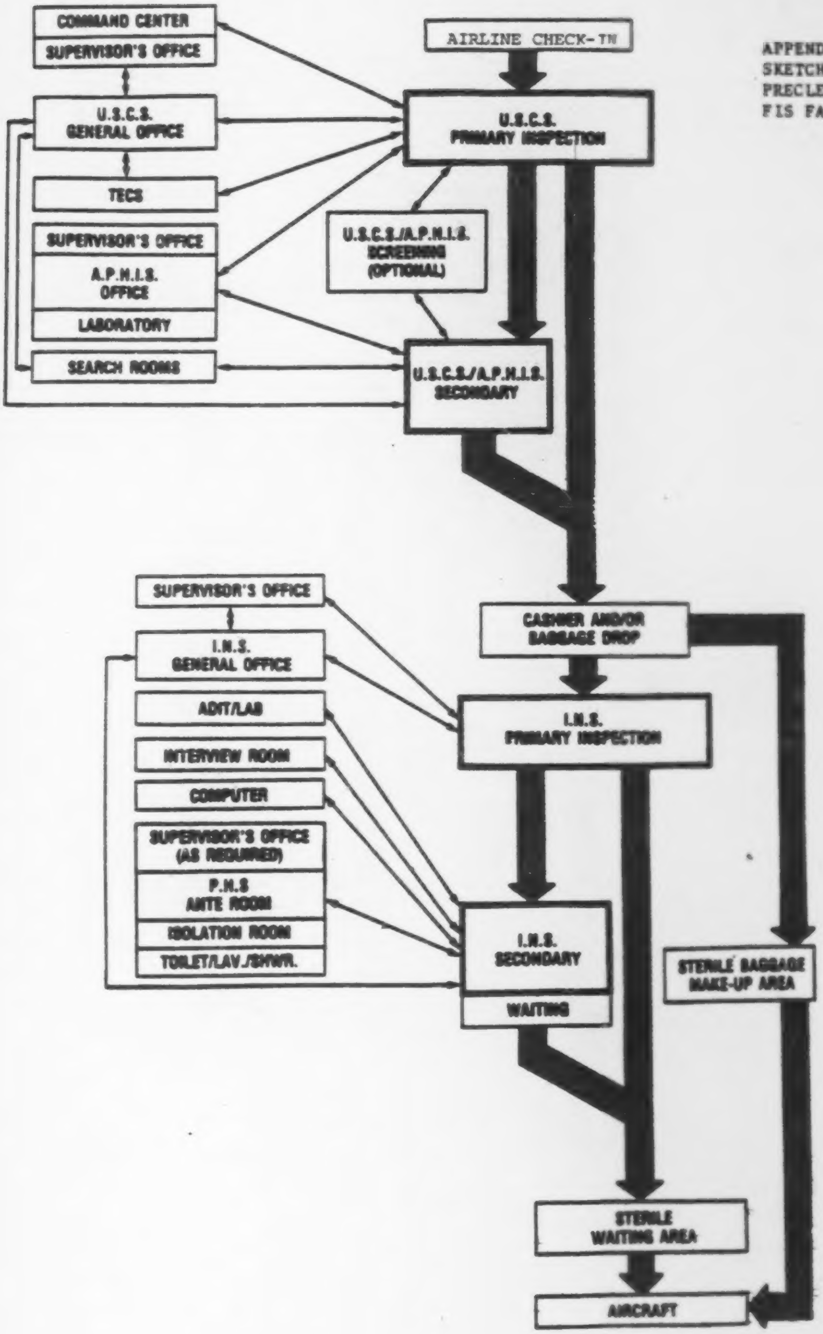
Prepared by the F.I.S. Facilities Guideline Committee, of the National Transportation Facilitation Committee.

For any revisions contact one of the above Agencies.

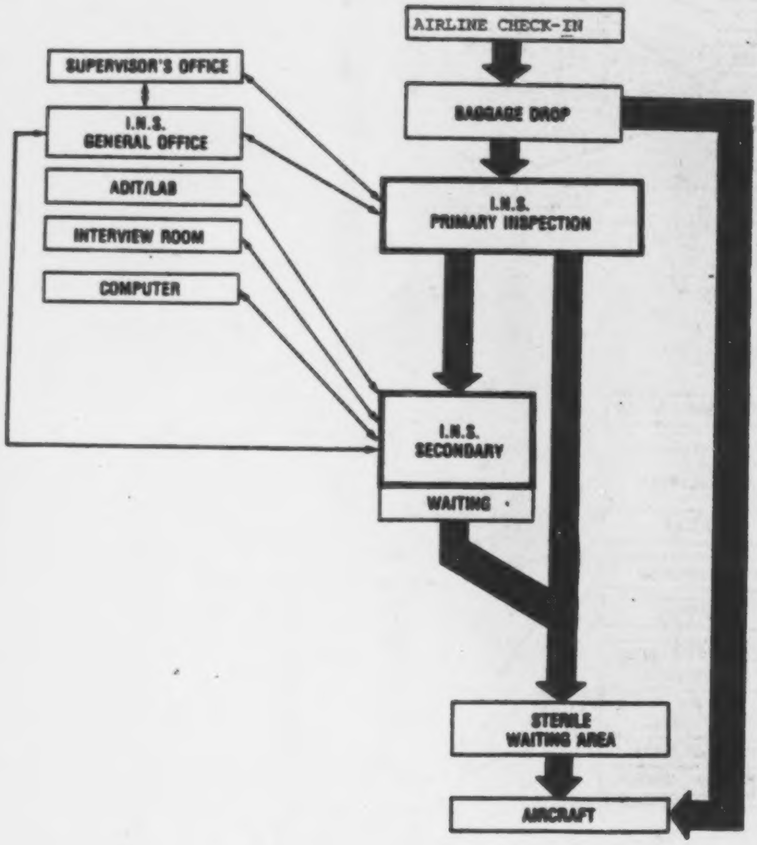
APPENDIX A
SKETCH NO.1
STATE SIDE
FIS FACILITY


ARRIVING AIRCRAFT
PASSENGERS DEPLANE
STERILE CORRIDOR OR HOLDING AREA
SUPERVISOR'S OFFICE
I.N.S. GENERAL OFFICE
ADIT/LAB
INTERVIEW ROOM
COMPUTER
SUPERVISOR'S OFFICE (AS REQUIRED)
P.H.S ANTE ROOM
ISOLATION ROOM
TOILET/LAV./SHWR.
I.N.S. PRIMARY INSPECTION
I.N.S. SECONDARY
WAITING
BAGGAGE CLAIM
COMMAND CENTER
SUPERVISOR'S OFFICE
U.S.C.S. GENERAL OFFICE
TECS
SUPERVISOR'S OFFICE
A.P.H.I.S. OFFICE
LABORATORY
SEARCH ROOMS
U.S.C.S. PRIMARY INSPECTION
U.S.C.S./A.P.H.I.S. SCREENING (OPTIONAL)
U.S.C.S./A.P.H.I.S. SECONDARY
CART RETURN SYSTEM
CASHIER AND/OR EXIT F.I.S. AREA
INTL. BAGGAGE RECHECK
PUBLIC ACCESS/ REGISTRATION
PUBLIC WAITING AREA EXIT TO STREETSIDE

APPENDIX A
SKETCH NO. 2
PRECLEARANCE
FIS FACILITY


AIRLINE CHECK-IN
COMMAND CENTER
SUPERVISOR'S OFFICE
U.S.C.S.
GENERAL OFFICE
U.S.C.S.
PRIMARY INSPECTION
TECS
SUPERVISOR'S OFFICE
A.P.H.I.S.
OFFICE
LABORATORY
U.S.C.S./A.P.H.I.S.
SCREENING
(OPTIONAL)
SEARCH ROOMS
U.S.C.S./A.P.H.I.S.
SECONDARY
SUPERVISOR'S OFFICE
I.N.S.
GENERAL OFFICE
CASHIER AND/OR
BAGGAGE DROP
ADIT/LAB
I.N.S.
PRIMARY INSPECTION
INTERVIEW ROOM
COMPUTER
SUPERVISOR'S OFFICE
(AS REQUIRED)
P.H.S
ANTE ROOM
ISOLATION ROOM
TOILET/LAV./SHWR.
I.N.S.
SECONDARY
WAITING
STERILE BAGGAGE
MAKE-UP AREA
STERILE
WAITING AREA
AIRCRAFT

APPENDIX A
SKETCH NO.3
PREINSPECTION
FIS FACILITY


AIRLINE CHECK-IN
BAGGAGE DROP
SUPERVISOR'S OFFICE
I.N.S.
GENERAL OFFICE
ADIT/LAB
INTERVIEW ROOM
COMPUTER
I.N.S.
PRIMARY INSPECTION
I.N.S.
SECONDARY
WAITING
STERILE
WAITING AREA
AIRCRAFT

FEDERAL INSPECTION SERVICES
SPACE AND FACILITY REQUIREMENTS AT INTERNATIONAL AIRPORTS

* Passengers Per Hour	800	1400	2000
U.S. IMMIGRATION & NATURALIZATION SERVICE			
# OF PIGGYBACK BOOTHS	7	12	17
GENERAL OFFICE SPACE	1300	2150	3000
CONFERENCE/TRAINING	200	250	300
BREAK/LUNCH ROOM	200	200	300
SECONDARY INSPECTION AREA	250	375	600
INTERVIEW ROOM(S)	80(1)	80ea.(2)	80ea.(3)
SUPERVISOR'S OFFICE(S)	150(1)	150ea.(2)	150ea.(2)
PORT DIRECTOR'S OFFICE	200	200	225
CLERK/RECEPTION	160	160	160
EMPLOYEE LOCKER & TOILET	as required	as required	as required
ADIT/LAB	150	150	150
STORAGE	100	100	100
HOLD ROOM'S W/TOILET FACILITIES	225	225	225ea.(2)
COMPUTER ROOM	100	100	100
U.S. PUBLIC HEALTH SERVICE			
SUPERVISOR'S OFFICE	200	200	200
CLERK/RECEPTION	150	150	150
GENERAL OFFICE SPACE	400	400	400
ISOLATION AREA	160	160	160
U.S. CUSTOMS SERVICE			
# OF PIGGYBACK BOOTHS	7	12	17
CUSTOMS SUPERVISOR	300	400	500
CUSTOMS OFFICE	800	1400	2000
IN-BOND ROOM (not required for preclearance)	200	400	500
CASHIER(S)	as required	as required	as required
TECS ROOM (lockable room)	150	200	200
SEARCH ROOMS	80 square feet. Should be located near the front of baggage modules. Minimum 2 per FIS facility		
PUBLIC SPACE W/COUNTER	150	200	250
STORAGE ROOM	150	200	200
AIRPORT DIRECTOR AND SECRETARY	350	350	350
CONFERENCE AND TRAINING ROOM	400	500	600
CUSTOMS PATROL	300	400	500
EMPLOYEE LOCKER & TOILET	as required	as required	as required

ANIMAL & PLANT HEALTH INSPECTION SERVICE

OFFICER IN CHARGE	200	200	200
INSPECTOR'S OFFICE	440	750	1200
LABORATORY	220	400	450
GARBAGE DISPOSAL UNIT (HP)	5	10	10 or larger
SUPERVISOR'S OFFICE	150	250	300
CLERK-STENOGRAPHER	-	150	250
STORAGE	100	100	100
CONFERENCE/TRAINING	150	20C	200
BREAK/LUNCH ROOM	150	200	200

Laboratory requirements: Stainless steel or formica counter top and drainboard stainless steel double sink, garbage disposal unit, under-counter cabinets, counter space for microscope and identification work, lockers, and at least two 220V outlets. At locations not having or expecting scheduled service office-laboratory space size requirements will vary from above requirements depending upon expected volume of charter traffic. Space requirements under these conditions will usually be less than shown and will be negotiated with the headquarters office of the Animal and Plant Health Inspection Service noted on frontispiece.

* This ratio can only be achieved under optimum conditions. Factors such as baggage delays, origin of flight, passenger mix, etc. are key determinants which could possibly mitigate against achieving these figures. These issues must be considered during early planning phases.

ALL INSPECTION AGENCIES

- Free automobile parking shall be provided for official FIS vehicles in close proximity to the international staging areas.

- The FIS requirements are based on one inspection area in a terminal and one terminal at an airport. Detail drawings and specifications for all work stations, inspection belt and electrical requirements are available through the appropriate office located on the frontispiece.

GENERAL AVIATION FACILITIES

1. GENERAL

The objective of the general aviation Federal Inspection Service (FIS) facility guidelines is to design an area which is capable of processing as many as 20 passengers and accompanying baggage as expeditiously as possible, while also providing for basic human comfort. The accompanying facility design layout accomplishes this objective. This design must be implemented in concert with all appropriate local building codes. Plans for all FIS facilities must be approved by the individual inspection agencies before construction is begun (see Frontispiece for approval information).

2. Design Requirements

a. Inspection area must have adequate glare-free lighting which provides an overall light level of 90 foot candles. Adequate air conditioning and heating must be provided for the entire inspection facility.

b. Visual and physical contact between arriving passengers and other persons will not be permitted until after FIS processing is completed. All doors and windows, with the exception of those facing the aircraft parking apron, shall be opaque or otherwise covered to ensure privacy of the inspection process. Entrance and exit doors should be located to facilitate passenger and baggage movement through the inspection area.

c. Two toilet rooms should be provided unless low traffic volume would require only one.

d. A stainless steel topped baggage inspection counter of the following dimensions, 30 inches high, 24 inches wide and 120 inches long must be provided. Adjacent to and at the end of the inspection counter there shall be a raised inspector writing area measuring 42 inches in height, 24 inches in width and 30 inches in length. The counter combination shall be located within the FIS facility as shown on the accompanying design layout.

e. Wall mounted stand-up writing counters, with blank processing form racks below, shall be provided for passenger use and located within the FIS facility as shown on the accompanying design layout.

f. A storage room with shelving shall be provided as well as a separate utility room, if needed, as shown on the accompanying design layout.

g. An electronic equipment room equipped with an adequate light and duplex electrical outlets shall be located in the inspection area. The door to this room must be secured with a cylinder lock.

h. A windowless 80 square foot search room incorporating an outward opening door must be provided as shown on the accompanying design layout. The room must be equipped with a table, without drawers, and chair both of which must be securely anchored or bolted to the floor or wall. The room must not contain any unsecured objects that can be used as weapons.

i. A telephone, for official use, shall be located in the inspection area. There shall be no public telephones located within the FIS area.

j. An exterior flag staff of sufficient height to accommodate the United States flag, and the pennants of the USCS, USDA, and INS must be provided.

k. Assigned parking space(s), for the inspector(s) in close proximity to the FIS facility must be provided.

l. Designated apron parking areas exclusively for the use of arriving international aircraft must be located in close proximity and in full view of the FIS facility. Aircraft parking areas must be adequately lighted where night operations are anticipated.

m. Appropriate signs facing the aircraft parking apron and marking the entrance to the FIS facility will be provided. Symbol signs will conform with the standards established by the International Civil Aviation Organization. Signs will be illuminated where night operations are anticipated.

3. Security Requirements

FIS area security is essential to ensure the integrity of the inspection process. Only passengers being processed are permitted access to the FIS facility. Visual and physical contact between arriving passengers and other persons is not permitted until after the inspection process has been completed and passengers have exited the FIS area.

4. Modular Facilities

Modular or mobile buildings may be substituted for permanent structures. The requirement for such facilities are the same as for permanent structures. The use of such structures and any facility design modifications resulting therefrom must be approved by the individual inspection agencies (see Frontispiece for approval information).

BERYL ANTHONY, JR.
4TH DISTRICT, ARKANSAS

COMMITTEES:
WAYS AND MEANS
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September 28, 1988

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Ways and Means
Subcommittee on Oversight

The Honorable J.J. Pickle
Chairman, Subcommittee on Oversight
1105 Longworth HOB
Washington, D.C. 20515

Dear Jake:

Time did not permit me to make inquiries with Commissioner von Raab concerning the Customs Service administration of the drawback law.

I am particularly concerned about C.S.D.88-1, and its impact upon the drawback of petroleum products. In this regard, I have submitted in writing to Commissioner von Raab questions which I would like included as part of the record of the Oversight hearings on September 27. Attached are copies of this correspondence.

I appreciate the opportunity to participate in these hearings, and I am hopeful that the Commissioner will respond promptly to these questions.

Sincerely,

Beryl

Beryl Anthony, Jr.
Member of Congress

BA/egw

Enclosure

BERYL ANTHONY, JR.
4TH DISTRICT, ARKANSAS

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September 29, 1988

The Honorable William von Raab
Commissioner
U.S. Customs Service
1301 Constitution Avenue, N.W.
Washington, D.C. 20229

Dear Commissioner von Raab:

In connection with recent hearings of the Oversight Subcommittee of Ways and Means on September 27, I have enclosed several questions regarding C.S.D.88-1 concerning the administration of the drawback law.

I would appreciate your response for inclusion in the record of these hearings.

Sincerely,

Beryl Anthony, Jr.

Beryl Anthony, Jr.
Member of Congress

Enclosure

QUESTIONS CONCERNING DRAWBACK (C.S.D.88-1)

1. In view of the fact that the purpose of the drawback law is to assist domestic industries to compete in foreign commerce, should not Customs permit monthly accounting and the consolidation of all tanks as a single unit, since this approach will permit the claiming of drawback in the most cost-effective way?

2. The petroleum industry presented extensive arguments in opposition to C.S.D.88-1, by memorandum dated January 29, 1988. Although Customs met with representatives of the petroleum industry prior to the submission of this memorandum, Customs never responded to requests to meet to discuss the arguments raised in that memorandum. In light of this refusal to discuss and consider the petroleum industry's position, would it not be appropriate for the Customs Service to reconsider C.S.D.88-1?

~~3. C.S.D.88-1 will unnecessarily increase the complexity~~ of drawback claims, thereby increasing the time and costs to be incurred by Customs' auditors in reviewing such claims. Is this increased administrative cost warranted?

TREASURY
U.S. CUSTOMS SERVICE

ASSOCIATE COMMISSIONER
WASHINGTON

October 17, 1988

Dear Mr. Anthony:

Commissioner von Raab has asked me to forward to you his answers to the questions "for the record" which you posed in your letter of September 29, 1988. Those answers are attached hereto, as is a copy of your original letter and questions.

Pursuant to a request from the subcommittee staff I have also forwarded to them a copy of these answers. Please let me know if you have any further questions.

Sincerely,

Charles R. Parkinson

The Honorable
Beryl Anthony, Jr.
House of Representatives
Washington, D.C. 20515

Attachments

QUESTION 1. CONCERNING CUSTOMS SERVICE DECISION 88-1

1. In view of the fact that the purpose of the drawback law is to assist domestic industries to compete in foreign commerce, should not Customs permit monthly accounting and the consolidation of all tanks as a single unit, since this approach will permit the claiming of drawback in the most cost-effective way?

This is a two part question.

Should the Customs Service permit monthly accounting periods?

Response:

Customs Service Decisions 83-54 and 88-1 do not prohibit the use of monthly accounting periods to show exportations for drawback to save on paperwork in the filing of drawback entries (claims). These decisions permit a drawback claimant to identify eligible drawback products that are exported for drawback which are commingled in storage with fungible (identical) nondrawback products that are not eligible for drawback in the order of the receipt and withdrawal of the products in the commingled storage. However, the decisions do not permit the use of the periods to obtain drawback for nondrawback products that are not eligible under the drawback laws. On the date of exportation for drawback, the inventory records of the claimant must show that there were drawback products available for drawback in the commingled storage. Accordingly, although a drawback claimant may present entries on the basis of a monthly accounting period, the claimant must maintain inventory records to show the total fungible input commingled in storage, the total drawback input commingled therein, the date of such commingling, the date on which each withdrawal is made, and the quantity withdrawn. This is illustrated in our letter of August 12, 1983. As a practical matter, a claimant should have daily inventory records in order to compile monthly records.

(Response to Question 1 Continued on Page 2)

QUESTION 1. Continued

Should the Customs Service permit the consolidation of all tanks as a single unit?

Response:

Our response cites, in part, the fourth paragraph under the caption "Law and Analysis" of C.S.D. 88-1 as follows:

> The commingling involved therein must likewise occur within each tank. If this were not so, nondrawback material documented as being in one tank could be withdrawn and exported, and claimed for drawback as if it were actually drawback material which is in fact shown by records to be stored in another tank. This would clearly constitute the substitution of finished products, which is unlawful under [19 U.S.C.] section 1313(b). To treat such material as 'commingled' under the ruling therefore would be to abide a fiction which would effectively accomplish by indirection that which the law does not permit by direction.

QUESTION 2. CONCERNING CUSTOMS SERVICE DECISION 88-1

2. The petroleum industry presented extensive arguments in opposition to C.S.D. 88-1, by memorandum dated January 29, 1988. Although Customs met with representatives of the petroleum industry prior to the submission of this memorandum, Customs never responded to requests to meet to discuss the arguments raised in that memorandum. In light of this refusal to discuss and consider the petroleum industry's position, would it not be appropriate for the Customs Service to reconsider C.S.D. 88-1?

Response:

Customs Service Decision 88-1 was, in part, a reconsideration of the ruling dated March 4, 1983, published as C.S.D. 83-54, and reaffirmed the Customs' position as stated therein. Shortly after the publication of C.S.D. 83-54, a Customs audit of a drawback claimant's records to support petroleum drawback entries revealed that a monthly accounting system was being used to obtain drawback where it would not otherwise be entitled under the law. The drawback claimant challenged the Customs' position and under the Internal Advice Procedures, the claimant and his attorneys were permitted to submit several legal briefs and met on many occasions with Customs personnel in the Regions and at Headquarters to present their views. The Customs Service made a decision on June 29, 1987.

However, representatives from the American Petroleum Institute, who were not a party to the Internal Advice Procedures, obtained a copy of the decision of June 29, 1987, and requested and were granted a meeting with Customs officials at Headquarters to present their views. They asked that the publication of our decision of June 29, 1987, be delayed to afford them the opportunity to submit a written position. They requested and were granted a meeting with the Commissioner of Customs which took place on November 4, 1987, at which time they were permitted to discuss their views. The representatives and their attorneys were given the extraordinary privilege of a further delay in the publication of the decision of June 29, 1987, and time to submit a written submission. The written submission that followed did not add anything that had not been in the record or had not been covered in

(Response to Question 2 Continued on Page 4)

QUESTION 2. Continued

the meetings. Accordingly, additional meetings would have served only to further delay the publication of the decision. These decisions are not limited to petroleum products and the petroleum industry but affect all industries that commingle in storage all types of fungible drawback and nondrawback products. Drawback claimants need to know the legal and technical positions of the Customs Service without undue delay to operate under their drawback programs.

Further, the protest of the petroleum drawback claimant who was a party to our Internal Advice Procedure has been denied and the claimant has filed a civil action against the decision of the Customs Service in the United States Court of International Trade, Court Number 88-07700498. By statute, the Court now has exclusive jurisdiction of the issues presented in C.S.D. 83-54 and C.S.D. 88-1. Section 177.7(b) of the Customs Regulations (19 C.F.R. 177.7(b)) states that:

> No ruling letter will be issued with respect to any issue which is pending before the United States Court of International Trade, the United States Court of Appeals for the Federal Circuit, or any court of appeal therefrom.

We conclude that it would be inappropriate for the Customs Service at this point in time to reconsider C.S.D. 83-54 and C.S.D. 88-1

QUESTION 3. CONCERNING CUSTOMS SERVICE DECISION 88-1

3. C.S.D. 88-1 will unnecessarily increase the complexity of drawback claims, thereby increasing the time and costs to be incurred by Customs' auditors in reviewing such claims. Is this increased administrative cost warranted?

Response:

The presumptions of the question which concludes that the rulings increase the complexity and the costs are at best speculative. The increased complexity, if any, is due to the extension by the rulings of the prior position of the Customs Service. The second paragraph under the caption "Law and Analysis" of C.S.D. 88-1 states, in part, as follows:

> By way of background, under earlier Customs rulings, when drawback and nondrawback material were commingled, drawback withdrawals had to be accounted for first against the commingled nondrawback input, resulting in little or no drawback as a practical matter.

The rulings changed the prior position and permit the claimant to show by his inventory records that there were drawback products available for drawback in the commingled storage at the time the products were exported for drawback.

When Customs decides to verify a claim by an audit, costs automatically incur. We do not agree that costs are increased because of C.S.D. 83-54 and C.S.D. 88-1. The claimant should have his records readily available for the auditors and if those records are available, there should be no increased costs in verifying a claim. The increased costs, if any, would be incurred due to the potential need to verify claims that previously were not allowed because of identification problems.

U.S. Customs Service

Customs Service Decisions

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., June 1, 1988.

The following are decisions of the United States Customs Service which are of sufficient interest or importance to warrant publication in the CUSTOMS BULLETIN.

JOHN E. ELKINS,
(for Harvey B. Fox, Director,
Office of Regulations and Rulings.)

(C.S.D. 88-1)

This ruling reaffirms the identification principle approved in C.S.D. 83-54, holding that fungible products commingled in storage and withdrawn therefrom for drawback purposes may be identified against the drawback products commingled therein in the order of their receipt into storage; letter of August 12, 1983 (215762) attached.

Date: June 29, 1987
File: DRA-1-CO:R:CD:D
218801 RB

Issues:

(1) What is the proper method for applying C.S.D. 83-54, when fungible drawback and nondrawback products are commingled in storage?

(2) In order to be recognized as a "drawback product" after delivery from the manufacturer, must the product be covered by a certificate of manufacture and delivery?

Facts:

A drawback claimant receives products manufactured under 19 U.S.C. 1313(b), *i.e.*, residual oil and distillate oil, which it seeks to export under 19 U.S.C. 1309(b), or which it blends to produce intermediate fuel oil (IFO) prior to desired export thereunder. To obtain drawback in this case, the claimant wishes to apply the identification procedure approved in C.S.D. 83–54 using a "30-day accounting period" which treats material in different storage tanks as commingled, and which ignores nondrawback receipts and withdrawals from storage.

Law and analysis:

(1) Under the identification principle approved in C.S.D 83–54, "fungible products commingled in storage and withdrawn therefrom for drawback purposes may be identified against the drawback products *commingled therein* in the order of their receipt into storage" (emphasis added).

By way of background, under earlier Customs rulings, when drawback and nondrawback material were commingled, drawback withdrawals had to be accounted for first against the commingled nondrawback input, resulting in little or no drawback as a practical matter (see, *e.g.*, Bureau letter dated March 5, 1956, to Supervising Customs Agent, Boston). Yet, while the basic focus of drawback identification has changed dramatically, the inventory recordkeeping requirements applicable thereto essentially have not (compare, *e.g.*, Bureau letter dated February 14, 1957, with Headquarters letter dated August 12, 1983, file DRA–1–09–CO:R:CD:D 215762).

In this connection, it is axiomatic, for example, that drawback input shown to be in one storage tank would not be commingled with nondrawback input shown to be in another tank (see Bureau letter dated September 24, 1946, abstracted as T.D. 51545–F, re: Cities Service Oil Co., Bureau letter dated May 5, 1955, to Supervising Customs Agent, San Francisco; and Bureau letter dated February 14, 1957, *supra*).

C.S.D. 82–35, cited by the claimant, is not authority to the contrary. The commingling involved therein must likewise occur within each tank. If this were not so, nondrawback material documented as being in one tank could be withdrawn and exported, and claimed for drawback as if it were actually drawback material which is in fact shown by records to be stored in another tank. This would clearly constitute the substitution of finished products, which is unlawful under section 1313(b) (see Headquarters letter dated June 1, 1982, file DRA–1–CO:R:CD:D 214335; Headquarters letter dated September 12, 1985, file DRA–1–09 CO:R:CD:D 217983). To treat such material as "commingled" under the ruling therefore would be to abide a fiction which would effectively accomplish by indirection that which the law does not permit by direction.

Accordingly, in establishing under the authorized procedure whether and to what extent certain input exists in commingled storage against which withdrawals for drawback may be charged, inventory records must be maintained showing the total fungible input commingled in storage, the total drawback input commingled therein, the date of such commingling, the date on which each withdrawal is made, and the quantity withdrawn (see Headquarters letter dated August 12, 1983, *supra*, set forth as an addendum hereof, which plainly illustrates the lawful application of C.S.D. 83–54).

The citation in C.S.D. 83–54 to the producibility principle (*i.e.*, the September 1, 1965, memorandum of the General Counsel, Department of the Treasury; currently see T.D. 84–49) was intended to furnish analogous support for the basic concept approved in the ruling because, generally speaking, the producibility principle, in its bare essence, similarly provides that where same-kind-and-quality (SKAQ) and non-SKAQ merchandise are used in manufacture under section 1313(b), any resulting products which are exported may, insofar as possible, be identified as produced from the SKAQ merchandise.

However, while the core premise of the identification procedure of C.S.D. 83–54 and the producibility doctrine in petroleum drawback refining is the same, the *application* of producibility in manufacturing drawback is fundamentally different from the application of the procedure indisputably called for under the ruling.

Because the producibility principle is dependent upon manufacturing, it operates, in practice, on the basis of discrete manufacturing abstract periods (monthly) (ignoring the use of nondrawback material in each period). Manufacturing periods in drawback, however, are, by definition, inextricably related to manufacturing, and, as such, they would be inherently inapplicable to the ruling, inasmuch as it is concerned broadly with the identification of commingled inventories, and not per se with manufacturing.

To elaborate briefly, the monthly manufacturing period functions, for petroleum drawback identification purposes, as a closed system, separate and distinct from every other monthly period (see T.D. 84–49(5)). Hence, exported goods may only be identified as produced from SKAQ merchandise which is used during the particular period in which the goods are produced; and this identification may be effected regardless of when during the month the goods are produced or the merchandise used. The fact that other (duty-paid) SKAQ merchandise is designated as a basis for drawback on such goods, when it is received and used in a prior period and at a different refinery, is owing to the substitution provision of section 1313(b) (see T.D. 84–49(3)). But the procedure advanced in C.S.D. 83–54 is strictly one of identification.

Accordingly, if the monthly period, as described, were to be extended to the procedure adopted in C.S.D. 83–54, qualified withdrawals from storage in a given month could only be identified—and thereby claimed—for drawback against drawback products placed into storage during that month; and, in so doing, products withdrawn, for instance, on the first of the month could be identified and claimed against drawback products even though they are not received into storage until the last day of the month. Such an approach to identification under the circumstances of the ruling would be patently absurd, would run contrary both to it and to existing law, and could not be approved thereunder (*cf., e.g., Asahi Chemical Industry Co.* v. *United States*, 4 CIT 120, 128 (1982)). While the policy of the drawback law, generally to promote export and/or manufacture, should be fostered, this may appropriately be done only within the framework of the law itself, and should not induce strained an illogical constructions thereof (see, *e.g., Joseph Schlitz Brewing Co.* v. *United States*, 181 U.S. 584, 589 (1901)).

It must be remembered that the identification principle approved in C.S.D. 83-54 is defined by the totality of the requirements contained therein—in particular, that the merchandise be commingled, as already noted, and, directly concomitant with this, that drawback be limited to that "which would be available under the method of separate storage and specific identification" of the drawback products. These requirements would indeed be rendered meaningless if Customs were to accept the use of a "30-day accounting period," or any construction of the ruling which ignored nondrawback withdrawals from storage. (Ignoring nondrawback withdrawals from storage ignores the impact of such withdrawals on available drawback input.) The ruling must naturally be viewed as a consistent entirety in such a manner that each of its elements is given just and proper effect (*cf., Colautti* v. *Franklin*, 439 U.S. 379, 392 (1979)).

It has been further determined that the identification procedures instituted in C.S.D. 83-54, as illustrated, and in C.S.D. 84-82 and C.S.D. 82-35, *supra*, represent the broadest lawful exercise of administrative discretion currently possible under section 1313. The procedures in C.S.D. 84-82 and C.S.D. 82-35 are similarly circumscribed (see Headquarters letter dated September 12, 1985, *supra*).

(2) The claimant is of the opinion that a product, in order to be recognized as a "drawback product" after its delivery from the manufacturer, need not be referenced by a certificate of manufacture and delivery. In support of this, the claimant cites 19 CFR 191.2(g) which defines a "drawback product" "as a finished or partially finished product manufactured in the United States under a drawback contract." The claimant's position is that as long as it can prove that the product it receives was manufactured by a party operating under a drawback contract, *i.e.*, that the manufacturer included the product on an abstract of its manufacturing records, this should be sufficient; a certificate of manufacture and delivery would not be needed.

The claimant's citation to section 191.2(g) is incomplete. This regulation also confirms that a critical feature of a "drawback product" is that it "may be exported with a claim for drawback * * *," but, under the circumstances, this could not occur without its being associated with a certificate of manufacture and delivery.

In this respect, it should be observed that the "drawback contract" referred to in section 191.2(g) consists of both a "drawback proposal" and a "drawback acceptance" of the proposal by Customs (19 CFR 191.2(c)(d)(e)). Section 191.2(c) defines a "drawback proposal" as containing "an offer to operate under the drawback law and regulations." These regulations stipulate, in 19 CFR 191.66(a), that, for drawback purposes, the claimant, whether the manufacturer itself or the exporter, must file with Customs a certificate of manufacture and delivery in relation to the product delivered. Such a certificate is essential in order legally to establish the identity of the product delivered as a "drawback product." In the alternative, it is well settled that a product delivered from the manufacturer, for which a certificate of manufacture and delivery is not given, is considered as a nondrawback product (see, *e.g.*, Bureau letter dated May 20, 1966).

Holdings:

(1) Products stored in different tanks at a tank storage facility are not commingled for drawback purposes under C.S.D. 83-54. Nondrawback withdrawals from commingled storage must be taken into account in implementing the ruling. In this regard, the correct application of C.S.D. 83-54 is illustrated in the August 12, 1983, addendum hereof.

(2) In order to be recognized as a "drawback product" after delivery from the manufacturer, the product must be covered by a certificate of manufacture and delivery.

Attachment.

The following is a full text copy of Office of Regulations and Rulings Headquarters Ruling 215762 of August 12, 1983.

Date: August 12, 1983
File: DRA-1-09-CO:R:CD:D
215762 RB

This is in reference to your letter dated March 23, 1983, file 552-01, with enclosure, wherein you inquire as to the specific operation of the identification procedure approved in Headquarters letter dated March 4, 1983, file DRA-1-09-CO:R:CD:D 215570 RB, "whereby fungible products commingled in storage and withdrawn therefrom for drawback purposes may be identified against the drawback products *commingled therein* in the order of their receipt into storage" (emphasis added).

This means of course that to the extent inventory records indicate the presence of certain drawback input commingled in storage, withdrawals for drawback purposes may properly be credited against such input in the order of its receipt into storage.

Consequently, in establishing under this procedure whether and to what extent certain drawback input exists in commingled storage against which withdrawals for drawback may be charged, inventory records must be maintained showing the total fungible input commingled in storage, the total drawback input commingled therein, the date of such commingling, the date on which each withdrawal is made, and the quantity withdrawn.

Thus structured, this method assures no greater drawback "than that which would be available under the method of separate storage and specific identification."

The actual operation of this method is illustrated below:

Lot No.	Date placed in storage	Quantity	DB allowance
1	March 1	100000 (gallons)	.03
2	March 10	60000	.0
3	March 12	25000	.035
4	March 25	20000	.0
5	March 28	60000	.04
6	March 30	25000	.02

Withdrawals are made on the following dates for drawback purposes or for nondrawback purposes, as hereinafter noted: March 2, 30000 gallons for drawback; March 5, 50000 gallons for nondrawback; March 11, 30000 gallons for drawback; March 13, 30000 gallons for drawback; March 26, 15000 gallons for nondrawback; March 29, 50000 gallons for drawback; March 31, 20000 gallons for drawback.

Drawback identification under this method would be as follows: the March 2 drawback withdrawal of 30000 gallons would be credited against drawback lot No. 1 (70000 gallons remain in storage, all of it from drawback lot No. 1); the March 5 nondrawback withdrawal reduces the total fungible (and also the drawback) input by 50000 gallons (20000 gallons remain in storage, all of it from drawback lot No. 1); the March 11 drawback withdrawal of 30000 gallons is credited against drawback lot No. 1 for its remaining 20000 gallons, the excess 10000 gallons further reducing the total fungible input accordingly (50000 gallons remain in storage, none for drawback); the March 13 drawback withdrawal of 30000 gallons is credited against drawback lot No. 3 for 25000 gallons, the excess 5000 gallons further reducing the total fungible input accordingly (45000 gallons remain in storage, none for drawback); the March 26 nondrawback withdrawal reduces the total fungible input by 15000 gallons (50000 gallons remain in storage, none for drawback); the March 29 drawback withdrawal of 50000 gallons is credited against drawback lot No. 5 (60000 gallons remain in storage, including 10000 gallons from drawback lot No. 5); the March 31 drawback withdrawal of 20000 gallons is credited against drawback lot No. 5 for its remaining 10000 gallons drawback lot No. 6 for 10000 gallons (65000 gallons remain in storage, including 15000 gallons from drawback lot No. 6).

Please be governed accordingly.

(C.S.D. 88-2)

This ruling holds that 19 U.S.C. 1520(d) does not authorize the Customs Service to pay interest on a drawback claim that was disallowed but later allowed as the result of a protest under 19 U.S.C. 1514.

Date: November 9, 1987
File: DRA-1-CO:R:CD:D
218872K

Issue:

Whether the Customs Service is authorized under 19 U.S.C. 1520(d) to pay interest on a drawback payment after a protest is allowed.

Facts:

Drawback is allowed (payable) or not allowed upon the liquidation of a drawback entry. However, section 191.72 of the Customs Regulations (19 CFR 191.72) provides for an accelerated payment procedure upon the approval of the appropriate Customs official. The drawback claimant posts a bond and receives the accelerated payment on the basis of the drawback entry prior to liquidation of the entry.

A manufacturing drawback claimant received a payment under the accelerated payment procedure. At a later date, the drawback entry was liquidated with a disallowance of drawback and the claimant returned the accelerated payment upon demand by the Customs Service. The drawback claimant filed a protest under 19 U.S.C. 1514 which was allowed and the drawback payment was authorized.

The claimant cites 19 U.S.C. 1520(d) as authority for the payment of interest from the date the accelerated payment was returned to Customs by the claimant to the date of repayment authorized by the allowance of the protest. The claimant states that it is obvious that Customs must pay such interest since, under 19 U.S.C. 1505(c), Customs bills for interest when a bill for overpayment of accelerated drawback is not timely paid.

Law and Analysis:

Sections (a) and (b) of 19 U.S.C. 1505 require that an importer deposit the amount of duties estimated by Customs to be due at the time imported merchandise is entered or withdrawn from warehouse for consumption and upon liquidation Customs shall collect any increased or additional duties due or refund any excess duties deposited.

Sections (a), (b), and (c) of 19 U.S.C. 1520, generally provide for refunds in excess of duties and other charges deposited and refunds due to clerical errors.

section 4.93(a) for articles enumerated in sections 4.93(b)(1) and 4.93(b)(2) are effective as of February 1, 1983.

(C.S.D. 83-54)

This ruling holds that fungible products commingled in storage after manufacture or production and withdrawn therefrom for drawback purposes may be identified against the drawback products or fungible drawback material commingled in the order of their receipt into storage. (Sec. 313, Tariff Act of 1930)

Date: March 4, 1983
File: CO:R:CD:D
215570 RB

Issue: If fungible products are commingled in storage, may withdrawals for drawback purposes be identified against the drawback products commingled therein in the order of their receipts into storage?

Facts: Fungible drawback and nondrawback products are commingled in storage. Withdrawals therefrom are made for domestic consumption as well as for drawback purposes. Under the method of identification as proposed above, claimants never receive greater drawback than would be available under the method of separate storage and specific identification.

Law and analysis: The drawback law as enacted in section 313, Tariff Act of 1930, does not require any particular method of identifying commingled material, leaving the matter to administrative discretion (see section 313(i), Tariff Act of 1930; article 1020, Customs Regulations of 1931).

In administratively prescribing a method of identification for drawback, effect should be given to the general purpose underlying the drawback law. This purpose is to assist American business and labor to compete more effectively in foreign markets by assuring that whatever enters into the cost of doing business in such markets is free from the additional cost of U.S. Customs duties. As a result, U.S. export trade is facilitated; the balance of trade is improved; jobs are created; and consequently the general economy thereby benefits (see *e.g., United States v. International Paint Co.,* 35 C.C.P.A. 87, at 90 (1948)). To this end, the drawback law is remedial in character and should be construed to accomplish the purposes intended (see *Fenton Co. v. United States,* 14 CCA 277, at 280 (1926)).

The proposed method if approved would fully effectuate the purpose of the drawback law as described above by permitting drawback while promoting cost effective administrative and accounting procedures, both from the standpoint of Customs and industry. This method would not result in greater drawback than that which would be available under the method of separate storage and specific identification and as such would be protective of the revenue as that term relates to drawback law.

Notably, the same identification principle involved herein has previously been considered and approved by the Office of the General Counsel, Department of the Treasury, with respect to an analogous drawback issue (see General Counsel memorandum to Assistant Secretary Reed, dated September 1, 1965).

Holding: A method of identification is approved whereby fungible products commingled in storage and withdrawn therefrom for drawback purposes may be identified against the drawback products commingled therein in the order of their receipt into storage. Also, under this method, where fungible articles are commingled in storage after manufacture or production, withdrawals for drawback purposes may be identified against the fungible drawback material used in the manufacture or production thereof in the order of its receipt into commingled material storage.

(C.S.D. 83-55)

This ruling holds that transaction value may exist even though final payment occurs after importation and assembly in the United States. (Sec. 402(b)(3)(A), Tariff Act of 1930 as amended by the Trade Agreements Act (TAA)).

Date: March 4, 1983
File: CLA-2 CO:R:CV:V
542930 MK
TAA #52

This refers to your letter of September 17, 1982, supplemented on November 29, requesting our advice on how certain articles you plan to import will be valued. We have also received comments from the concerned import specialist at Blaine, Washington.

You advise that your company does complete design and supply of all components for chemical plants and pulp and paper systems. The typical transaction between your company and the U.S. importer involves one contract and one total price. In fulfilling the contract, some components will be manufactured in Canada and some will be manufactured in the United States and shipped directly to the job site. Some U.S. articles may be exported to Canada and assembled in the imported product.

The purchasers are end users who are not related to your company, and they do not furnish any assists such as tools or molds.

At a meeting with the concerned import specialist, he discussed a method of valuation which you believe would result in an overstated value and escalated duty cost. He evidently suggested that the lump sum contract price might represent transaction value, the preferred basis of appraisement under the Trade Agreements Act of 1979 (TAA).

THE COMMISSIONER OF CUSTOMS

WASHINGTON, D.C.

January 25, 1989

Dear Mr. Chairman:

This is in response to Mr. Frenzel's follow up questions to the Customs' Oversight hearing of September 27, 1988.

I trust that you and Mr. Frenzel will find the responses acceptable. However, if you have any questions do not hesitate to call me.

Yours faithfully,

The Honorable
J.J. Pickle, Chairman
Subcommittee on Oversight
Committee on Ways and Means
House of Representatives
Washington, D.C. 20515

Enclosure

Questions for Commissioner von Raab from Cong. Frenzel

1. I understand that some of the classification regulations under the Harmonized System have not yet been issued. Particularly, the textile category guidelines have not been issued which will give importers some idea of what major classifications will be under the HS. When will all of the regs be issued? Hopefully they will give importers plenty of time to adjust.

2. CAn you provide, for the record, the number of Customs personnel assigned to enforce the Export Administration Act since the start of Project Exodus, reported on an annual basis. This would include both overseas and domestic employees. If some employees have other responsibilities, I would like a rough percentage of time spent by groups of employees--i.e., special agents spend 25% of their time pursuing possible export control violations. Also, I would like the percentage of your total budget that is spent for EAA enforcement purposes. Also, I would like annual transfers from other departments or agencies of government to Customs for EAA purposes.

3. Please provide for me information concerning Customs policy on raids of companies suspected of export control violations. Specifically, what policies do you have to prevent the following abuses that have been experienced by companies that may or may not have committed a violation:

    A) Many agents "taking over" a company, showing force, gestapo-like conduct, herding employees into one room, not explaining to anyone what was happening. Shutting down company switchboards for hours. Why cannot a couple of agents appear & request assistance from company employees without disrupting the whole company and causing fear and confusion among the employees? Companies are not guilty until proven so. Why does Customs treat them as guilty parties before any decision to prosecute?

    B) Visiting and intimidating company employees at their homes is very troubling to me. This just should not occur.

    C) Calling the press to make sure they make an example of a guilty party (as determined by Customs) should not occur. Further, Customs employees should not give interviews to the press on cases in progress.

    D) Other shipments of the company in question should not be held up by Customs just to further harrass the company.

    E) A raid may occur on a sale that did not even require a license. Does Customs make that determination before they decide to devote resources to a raid and subsequent investigation?

RESPONSE TO QUESTION 1

Customs Office of Regulations and Rulings and our National Import Specialists staffs jointly revised the Textile and Apparel Category Guidelines to conform to the provisions of the new Harmonized Tariff Schedule. The Guidelines provide information which will assist Customs Service personnel, importers, foreign nations, and other interested parties in determining the proper textile and apparel restraint categories applicable to imported textile merchandise. The revised Guidelines were made available to the public during the first week in December 1988. The Guidelines were also published in full in the December 21, 1988, issue of the Customs Bulletin. Attached for further reference is an historical chronology of all actions taken by Customs to implement the Harmonized Tariff System.

Actions Taken by U.S. Customs to Implement the Harmonized System Effective January 1, 1989

The major impetus for the creation of an international harmonized commodity code was trade facilitation. Historically, each country maintained a different tariff system for describing and classifying merchandise which, in effect, created a trade barrier in the international marketplace. After failed attempts by others in this area, the Customs Cooperation Council issued a report (1973) on the feasibility of creating a standardized commodity code and began technical work on the system.

The Harmonized System (HS), a multipurpose nomenclature for classifying goods moving in international trade, is the culmination of 15 years of effort by Customs on the international and national level. Significant actions taken by Customs to develop and implement the HS, during those 15 years, are outlined in the following chronological account:

1973-1983 - The Early Years

o In May 1973, the Customs Cooperation Council gave formal approval to the development of a harmonized commodity description and coding system for use in international trade. At that time, Customs was expected to play a key role in the projects as the agency responsible for coordinating U.S. interests at the Federal level through the Interagency Advisory Committee on Customs Cooperation Council matters. The Council formed the Harmonized Systems committee in 1973 to develop an international commodity description and coding system.

o The Trade Act of 1974 made provision for Customs involvement in HS work internationally.

o In FY 1975, Customs played an active role in the Council's continuing program of facilitating international trade. This included development of three new technical annexes to the International Convention on the Simplification and Harmonization of Customs Procedures, and additional work on the development of an international harmonized commodity description and coding system.

o In FY 1976, Customs continued to participate in the CCC's initiatives, developing five new technical annexes to the International Convention on the Simplification and Harmonization of Customs Procedures, bringing the total number of annexes adopted by the Council to 17.

o In FY 1977, Customs continued to assist in the development of an international harmonized commodity description and coding system through coordinating U.S. participation in the project through its *chairmanship of the U.S. delegation to the* Harmonized System Committee.

o After several years development in the General Agreement on Tariffs & Trade (GATT), the new international standard for Customs valuation was implemented. The CCC was given a key role in technical interpretation and international application of this standard.

o During FY 1980, the Council adopted four new technical annexes to the International Convention on the Simplification and Harmonization of Customs Procedures, bringing the total number of annexes adopted to 30 and completing the Convention.

o From 1980 to the present, Customs provided a voting member of the 484e Committee which reviews proposals to add or delete nomenclature headings, subheadings, and statistical reporting quantities in the HS. The Committee consists of three voting members including representatives from Customs, U.S. International Trade Committee (USITC or ITC), and Commerce.

o Customs personnel also participated in the Chemists' Committee meetings of the Customs Cooperation Council.

o In 1983, Customs assisted in the completion of the drafting of the International Convention on the Harmonized Commodity Description and Coding System. This included the HS itself, and the Explanatory Notes (actually completed in 1985). The onvention is the Treaty which provides the agreed rules for applying and updating the HS.

1984-1986 - Development of HTS

o In 1983-1984, Customs assisted the USITC in drafting the Harmonized Tariff Schedule or HTS (the 8-digit U.S. system). The objective of the U.S. system was to obtain greater simplification and administrability in the new tariff and provide for rate-of-duty conversions.

o In 1983-1984, National Import Specialists (NIS) and New York Regional staff served on delegations to HS meetings in Brussels.

o In 1984, Customs staff served as a panel member in public hearings on the HS conducted by the Office of the United States Trade Respresentative (USTR).

o In 1984, HS training sessions were held for field laboratory personnel, with assistance of a government chemist from the United Kingdom. Training for field analysts was provided through interlaboratory sample analysis in controversial technical areas (hydrocarbon waxes, textiles, plastics, and chemicals) to ensure uniformity of analysis upon adoption of the HS.

o In 1985, twenty Headquarters officers, National Import Specialists and Regional officers were trained as HS instructors. In addition, an excellent four-day course was developed for NIS's and Import Specialist team leaders and during 1986 and early 1987, all NIS's and Import Specialist team leaders attended.

o In 1985-1986, Customs assisted the USTR in the GATT negotiations on the Harmonized System with a detailee to Geneva for over one year. The GATT negotiations were completed in 1986.

o A Customs representative, beginning in 1985, served as the Customs Headquarters representative at numerous Generalized System of Preferences (GSP) Interagency Subcommittee meetings held at USTR to decide on new tariff breakouts under the HS due to the conversion from the TSUS to the HS.

o In 1986, an extensive evaluation of the impact of the HS on Customs laboratory operations was completed. This evaluation included new equipment needs, expected increases in sample workloads under the HS and training needed for Customs analysts in new methods required upon adoption of the HS.

o In April 1986, the Customs Attache, Brussels, submitted a detailed work plan on HS implementation to the Deputy Commissioner. This plan was based on a review of various international approaches to the HS, as well as experience with implementation of various other trade programs. This plan became the basis for the detailed implementation work to follow.

o In April 1986, the initial planning document was drafted for the Office of Automated Commercial System (ACS) action required for HTS conversion. In addition, the initial database design was initiated for HTS conversion.

o In June 1986, the International Nomenclature Staff (hereinafter INS) reviewed all Customs forms and notified the appropriate offices of those forms/publications that appeared to require modification to conform to the HS. In September 1986, notification was given of several entry forms that would have to be revised to accomodate the longer HS tariff number.

o In July 1986, design was begun on a system to enable HS rulings to be disseminated electronically to Customs personnel and to the importing public.

o In October 1986, the following ACS actions were completed: plan was finalized for developing ACS conversion to HTS; differences between TSUS and HTS identified for ACS action needed for conversion; and the ACS database table layouts were created for the HTS database.

o On November 1, 1986, the National Import Specialists in New York and the Headquarters legal staff in Washington, D.C. both commenced issuing advisory HS classifications when issuing rulings on prospective importations. New York issued approximately 4,000 such rulings annually and Headquarters approximately 3,000. The advisory HS ruling is accomplished by adding a stock paragraph to the letter that gives the HS code and a caution that it is not binding, nonchallengeable and stating when binding rulings would be available.

1987 - Implementation

o In May 1987, in anticipation of a January 1, 1988 implementation, the Assistant Commissioner (Office of Commercial Operations) requested Mr. Paul Andrews, District Director, San Francisco, to survey the Customs Service's preparation activities for implementing the Harmonized System.

o On May 29, 1987, at a conference in Leesburg, Virginia, the Commissioner of Customs set the Harmonized System conversion as the number one priority for ACS. This was a critically important step in alerting all Customs offices of the importance, complexity, and priority of the HS effort.

o The International Nomenclature Staff developed a three day course for Customshouse brokers and other entry filers. In May, in Washington, D.C., the first brokers course, a "test run" was given to a group of National Customs Brokers & Forwarders Association of America, Inc. (NCBFAA) national officers, directors and other members and was very well received.

o By memorandum dated June 10, 1987, the "Andrews Report" on the implementation of the Harmonized System was transmitted to the Assistant Commissioner, Office of Commercial Operations (OCO). The Report, drawing on the earlier Brussels advice, contained 32 recommendations and identified over 50 major tasks remaining to be accomplished.

o As a result of the Report's recommendation, a Harmonized System Implementation Group (HSIG) was established in 1987 to coordinate Customs operational and other efforts to implement the HS on January 1, 1988. The HSIG was chaired by the Deputy Assistant Commissioner (OCO) and consisted of managers from the Office of Regulations & Rulings (OR&R); the Office of Trade Operations (OTO); ACS; International Affairs; the Office of Data Systems (ODS); Inspection & Control (I&C); Technical Services; and the New York Region. The Group ensured that implementation tasks were identified and completed in a timely and effective manner. Weekly meetings were held to establish priorities, monitor progresss and resolve outstanding issues. The final HSIG meeting was held in December 1987, with January 1, 1988, still expected as the transition date.

o During 1987-1988, various groups worked on the implementation of the HTS within Customs, including a comprehensive training program of Customs personnel and private trade community people. The training program was conducted for more than 600 supervisory import specialists, Assistant District Directors (Classification & Value), and other regional personnel at 20 locations. Specialized training of 40 persons as field instructors in the HS was also conducted during the summer of 1987. The field training of all Associate Import Specialist, entry control personnel, liquidators, auditors, inspectors and mail branch personnel was successfully completed in December 1987.

o Customs training of the private sector, i.e., brokers and entry filers, also covered approximately 2400 persons across the U.S. over a 7-month period (20 Customs officers assisted as instructors as well). In addition, courses and seminars were conducted for NCBFAA, American Association of Exporters & Importers, (AAEI), National Council on International Trade Documentation (NCITD) and the Air Transport Association staffs by Headquarters personnel. Customs field offices also provided training assistance to the private sector to the extent that time and their resources permitted.

o The Customs operational staff developed HS conversion fact sheets which provided instructions to the field on changes to policies and procedures (entry, quota, statistical processing, etc.). These fact sheets were issued in anticipation of a January 1988 HS implementation date.

o In July 1987, the following ACS actions were essentially completed: final database design for the HTS; data conversion to the HTS; maintenance programs for the HTS files; data (HTS) input based on the October 1986 ITC Publication; reports designed; and a other-government agency file created for the Harmonized System.

o Efforts to implement an anticipated automated ruling system permitted the field distribution of terminals, one for each 2.5 commodity teams - a significant start in providing immediate information access and microcomputer capacity to all teams.

o The major Customs form to be affected by the U.S. adoption of the HS is the CF 7501 and CF-7501A, the Entry Summary form. Instructions have been issued to the field for accomodating the longer harmonized classification number. The form will be revised to reflect HTS changes and modifications based on the U.S.-Canadian Free Trade Agreement.

o In July 1987, a meeting was held between U.S. and Canadian Customs concerning the bilateral exchange of rulings. Agreement was reached to exchange the full text of select rulings beginning about February 1, 1988. Due to the implementation delay, the February exchange of rulings did not occur. Customs is, however, prepared to proceed with the program. Both Services also agreed to exchange publications and documents which provide insight to HS classification principles and their interpretation. Customs also agreed to participate in the program for the exchange of national classification rulings being undertaken by the CCC, and has provided more rulings than any other country for circulation.

o In August 1987, the INS Director met with Commerce representatives to clarify their current operation with regard to export advice and to inform them of Customs plans to issue advisory export ruldings concurrent with the issuance of binding import rulings. Customs determined that the HTS number would be used to furnish export advice. (In October 1987, Customs distributed approximately 500 sets of Schedule B to its offices for placement in Customs reading rooms and other areas accessible to the public.)

o In September 1987, Customs started publishing the monthly package of "Harmonized Commodity Description and Coding System" advisory rulings. The availability of the package was announced in the Federal Register (52 FR 28928) on August 4, 1987.

o Beginning August 25, 1987, tariff classification rulings issued by Customs under 19 CFR Part 177 contained binding classifications under both the TSUS and the HS. Rulings under the HS would be applied, however, only with respect to merchandise entered, or withdrawn from warehouses, on or after the effective date of the HS in the U.S.

o In September 1987, the following ACS actions were completed: broker (ABI) tariff tapes for HTS were generated (based on October 1986 ITC Publication); the Harmonized Notes file and Index files were completed and installed in ACS; and the entry programs were modified.

o In September 1987, the National Import Specialists completed the conversion of the selectivity criteria to the HS. This conversion was used in the revision of the Inspector's Rate Book.

o In November 1987, additional ACS actions were completed, including: conversion programs from ITC floppy disk to ACS Selectivity; examination criteria and instructions maintenance programs completed; and conversion of all TSUS examination criteria instructions (approximately 74,000 records) to the HTS.

o The Customs laboratory staff provided technical advice to USDA and other agencies regarding the scientific aspects of particular HS provisions. In addition, the New York laboratory staff responded to over 450 requests for technical advice from the NIS's in 1987 and over 700 requests in 1988 concerning classification issues under the HS. The New York staff has established a data base for classification of over 1700 chemicals under the HS for use by all field laboratories to ensure uniformity.

o In 1987-1988, the Quota staff coordinated and developed extensive procedures with both CITA and ACS to implement textile quotas when the HS becomes effective. The Textiles and Metals Branch of OTO did the same with respect to textile visa requirements.

o During 1987-1988, Interagency Subcommittee meetings were held at USTR to discuss HS implementation as it relates to the CBI program and the U.S./Israel FTA. Customs operational representatives assisted at these meetings.

o The Headquarters INS prepared a number of public information materials on the HS, including a 20-minute video (approximately 40 copies were distributed) which describes the potential effects on and benefits to businesses from HS implementation; a folded-page question and answer brochure on the HS was distributed to over 5,000 requestors; and a 74-page HS Handbook was produced and distributed to Customs officers and to members of the public requesting the book, with more than 3,000 copies mailed to the public. In addition, a business-oriented brochure was prepared and distributed throughout the U.S. explaining the HS and its potential effects on businesses involved in international trade; and numerous articles on the HS, written by Customs officers, appeared in trade journals.

o In 1987-1988, a number of Customs publications were reviewed and revised to conform to the HTS. The titles currently available to the public include: Import Quotas; International Mail Imports; Tariff Classification of Prospective Imports; and Temporary Importation Under Bond. Other publications awaiting printing are as follows: Importing Into the United States; Know Before you Go; GSP and the Traveler; Highlights for Government Personnel; and Pleasure Boats.

1988 - Implementation Continues (HS effective 1/1/89 as a result of the signing of the Omnibus Trade and Competitiveness Act of 1988 on August 23, 1988)

o In early 1988, the Headquarters legal staff along with the NIS staff, completed the revision of the Customs Regulations in accordance with the Harmonized Tariff Schedule, a task which required the modification of over 230 Sections involving changes which were often of a substantive nature. On December 21, 1988, these 120 typewritten pages of changes were published as Interim Regulations, for comment, in the Federal Register.

o In April 1988, ruling formats were standardized to enable electronic dissemination of rulings. In July 1988, Customs transmitted test rulings data to the private sector for the first time.

o In the summer 1988, several senior attorneys were designated to have prime responsibility for working with the NIS's, anticipating HS areas where clarifying rulings are necessary and issuing them. The program is on-going.

o In September 1988, the operational staff assumed the functional role for implementation of the HS and to serve as the coordinator and respository for updated fact sheets. Any field instructions are to be coordinated with them. (Initial telex implementing the "new" fact sheets was issued on November 18, 1988. To date, twenty-two HS fact sheets have been issued. In 1987, a total of 5 fact sheets were issued; these are being redrafted and reissued.)

o In October 1988, the INS conducted a refresher training course for operational and legal staffs. In addition, a makeup training class was held, conducted by OTO and OR&R in late October.

o On October 24, 1988, a survey of all districts was conducted to ascertain readiness for HS implementation. Each district director was required to certify HS readiness. An analysis of district responses indicated that most locations are ready for implementation.

o With real membership in the HS at hand, the INS prepared and coordinated issue papers for the October 31 - November 11 session of the Harmonized System Committee in Brussels.

o The INS was instrumental in defining Customs role in implementing the international convention on the HS. In a Federal Register notice (53 FR 45646), November 1988, published by USTR, the role of Customs and other agencies vis-a-vis the HSC and dispute settlement was defined.

o In 1988, the following ACS actions were taken: HTS specifications issued to ABI users; broker seminar held on HTS for ABI users; personnel trained in accessing and obtaining data from the ACS HTS database; ACS conversion of programs from ITC floppy disk (latest version); entry programs completed with special entry processing programs for watches completed; existing programs converted and modified to process Canadian FTA, APTA and civil aircraft; broker testing of HTS data via ABI; all data from the HTS supplement 2 has been input and verified, with second verification in progress; over 100 ABI user HTS data tapes mailed on December 8, 1988; and HTS fact sheets and instructions via administrative messages are being provided to ABI users.

o ACS programs that will permit dual processing (either TSUS or HTS, depending on the entry date) moved to production December 16, 1988. ACS accomplished input of 4 Presidential proclamations dealing with HTS and/or Canadian FTA, etc., containing 400-500 changes.

o In November, the Office of Inspection & Control was urged to continue to follow-up on the printing/distribution of HS inspector rate books.

o The legal and NIS staffs jointly revised the Textile and Apparel Category Guidelines to conform to the provisions of the new Harmonized Tariff Schedule. The Guidelines provide information which will assist the Customs Service personnel, importers, foreign nations, and other interested parties in determining the proper textile and apparel restraint categories applicable to imported textile merchandise. The revised Guidelines were made avabilable to the public during the first week in December 1988. The Guidelines were also published in full in the December 21, 1988, issue of the Customs Bulletin.

o Currently, the OR&R staff is developing a separate index for HTSUSA classification rulings and pursuing the automation of the internal Legal Precedent Retrieval System.

o In December 1988, Customs transmitted more than 500 electronic rulings decisions issued during 1988 to a private sector group for dissemination.

o An instructional issuance has been prepared by the Headquarters laboratory staff, for field use, which will ensure uniformity in the use of conversion factors utilized in converting quantities to the metric system, as required under the HTS.

o In December, Customs continued to receive a sizeable number of verbal queries relating to operational aspects of HS implementation from the private sector and Customs field offices. These inquiries were answered in an expeditious fashion. In addition, there has been a steady increase in the number of written requests for information on the HTS implementation.

o With the implementation of the HTS, Customs will now need to concentrate on the maintenance of the new tariff as an up-to-date instrument. Plans are being made to amend the system to take into account changes in technology and patterns of international trade. Also, Customs is taking a leading role in the development of an international commodity descriptor list as an adjunct to the system as an aid in the use of the HS in automated systems. In addition, any rates of duty revisions to be made must be submitted for Congressional approval.

o Effective December 19, 1988, Customs provided a "help desk" in Headquarters to answer questions from the public on the new Harmonized Tariff Schedule and other new commercial programs and procedures. In addition, a member of the INS staff has been designated as an "ombudsman" to resolve problems concerning the processing of the new District binding rulings program.

o Customs is in the process of expanding the binding rulings program so that rulings requests can be submitted to all Customs Districts to obtain binding classification ruling decisions under chapters 1-97 of the HTS by National Import Specialists and designated Deputy National Import Specialists.

In order to prepare the field staffs, commodity-specific seminars have been conducted for the NIS's and Designated National Import Specialists (DNIS). The program is being implemented effective January 1, 1989 in order to vastly improve classification uniformity at the inception of the HS.

o Customs will continue to respond to the many internal and public inquiries on the new HS; and continue its participation in the 484e Committee (through 1995) and in the Harmonized System Committee of the CCC.

RESPONSE TO QUESTION 2

The U.S. Customs Service has investigative responsibility for enforcement of both the Export Administration Act and the Arms Export Control Act. These Investigative responsibilities, together with our Export Enforcement of Foreign Assets Control responsibilities, are conducted through the Strategic Investigations Division of our Office of Enforcement.

The domestic field structure of our Strategic Investigations Division consists of a total of 263 investigators. Of this total, 212 investigators working in large cities or smaller ports with active export enforcement programs, are dedicated full time to export enforcement. The other 57 investigators are assigned export enforcement cases along with cases involving other jurisdictions enforced by the Customs Service. On average, 50 percent of their case loads relate to export enforcement. Within our 19 foreign offices we have 90 investigators that, for the most part, are involved in the full range of Customs enforcement jurisdictions. The percent of time that these officers dedicate to Strategic Investigations varies from a high in some of our European offices of 50 percent, to a low in some of our Far East offices of 30 percent.

A review of the case activity regarding Strategic Investigations has caused us to conclude that, overall, investigative efforts are divided almost equally between enforcement of the Export Administration Act and the Arms Export Control Act.

In addition to this investigative force, the Custom Service has dedicated 64 inspectors full time to the interdiction of illegal exportations. There are also 35 inspectors that conduct Export Inspections as part of their duties. These inspectors are assigned to various airports and shipping terminals across the United States and can be easily augmented by other inspectional units as needed.

For FY 89, the Customs Service requested $15,628,000 to support the Illegal Export program element which includes enforcement of both the Arms Export Control Act and the EAA, as well as other special programs such as Foreign Assets Control and embargoes; this represents approximately 1% of the total Customs Service appropriation for FY 89.

Finally, for at least the last three fiscal years, there have been no inter-departmental transfers into Customs for EAA purposes.

RESPONSE TO QUESTION 3

AND ITS SUBPARTS A - E

The Customs Service policy is to execute search warrants as opposed to conducting "raids." This is more than a semantical difference as the word raid has a connotation which overlooks the process of obtaining and executing a search warrant. In EXODUS cases, as in any other case we investigate, we often attempt to obtain evidence of criminal violations by making application to a federal judge or magistrate for a court ordered search warrant issued in accordance with the Federal Rules of Criminal Procedure.

Before these search warrants are granted the judge must find that there is probable cause to believe that a criminal violation has occurred and that there exists on the premises to be searched evidence, fruits, or instrumentalities relating to the criminal violation. Again, it is important to note that once a search warrant is issued the officers specifically referenced on the face of the warrant are in fact ordered by the court to conduct a search of the person(s), property, or premises also specifically cited on the face of the warrant.

The "abuses" allegedly experienced by companies undergoing a search of their premises such as "gestapo-like conduct" are false accusations. Indeed, the Federal Rules of Criminal Procedure provide a specific remedy for any such abuses; and all criminal defense counsel are fully aware of these remedies. The remedies may even include return of the seized evidence and its exclusion from trial. Consequently, I can assure you that our officers do not engage in any such abuses; moreover, if any abuses occur you can be equally assured that defense counsel will not hesitate to attempt to have the court take appropriate action, especially when incriminating evidence may otherwise result in the conviction of their clients.

Our officers are authorized to use only the necessary force in executing a search warrant and in the situation of a business, force of any kind is seldom necessary. It is, however, often necessary to secure the premises before beginning the search in order to prevent destruction of evidence particularly when the object of the search are documents which are easily destroyed.

A) As discussed above in executing a search warrant our agents do not "take over a company", "show force", or engage in "gestapo-like conduct." If a company believes agents engaged in inappropriate conduct in executing a search warrant, that company should immediately contact and petition the court to review the matter in accordance with Rule 41 of the Federal Criminal Rules of Procedure. Additionally, the company should immediately inform the agents' supervisors of the alleged misconduct. In either case, if the allegations are not spurious, as I believe those made to you are, then both the court and most certainly the Customs Service will take all appropriate disciplinary action.

B) Our agents occasionally visit company employees at their homes in order to provide the employee with a private setting for whatever statement or evidence the employee wishes to give. However, it is not our policy to intimidate or coerce employees or any witnesses.

C) It is our general policy that our agents will not give interviews to the press on any specific cases under investigation. Any information available to the press in such cases is limited to public record, such as the affidavit submitted in application for the search warrant.

D) When conducting an investigation of suspected illegal exports of high technology, particularly that being exported to East Bloc countries, it is clearly prudent to scrutinize all of the specific company's exports. However, Customs will not delay any company's shipments only to harass the company. To do so would be counterproductive; then the company and its defense attorney would surely make issue of such conduct at trial and may even be able to convince a jury that unusual delays evidence the government's inability to determine the legality of the export. Therefore, they would argue that the defendant should not be held liable, if even the government could not easily determine the legality of export.

E) We often conduct investigations of exports which ostensibly do not require a license, but which are actually being transshipped to an East Bloc country. As you know, some exporters will often attempt to supply technology to East Bloc countries through countries which may receive the technology without a specific license. When we have probable cause to believe the company is knowingly transshipping to a licensable country; and can demonstrate such to the satisfaction of a judge, then we do attempt to obtain evidence through execution of a search warrant.

Finally, I should advise you, that executing a search warrant is often the preferred if not the only method of obtaining incriminating evidence. Violators will normally not willingly provide the government with documents which evidence their guilt. Moreover, the process of obtaining a search warrant is very demanding; consequently, we and all citizens of the United States can rest assured that neither Customs nor any other Enforcement agency will be authorized to conduct searches of premises unless a court is convinced that there is probable cause to believe that a specific criminal violation has occurred, and that there is probable cause to believe that the premises to be searched contain evidence of that violation.

I. U.S. Customs Service Response to the Subcommittee on Oversight's Questions

A. Advance Tariff Classification Opinions

Q: Do you currently have a process for evaluating the accuracy and promptness of advance opinions regarding classification of specific items given to importers, their brokers, or their attorneys, by local import specialists? If so, please describe the process.

A: Most import specialists provide classification advice as a regular part of their duties. All classification opinions, verbal or written, provided by local import specialists, on perspective importations, is advisory only and not binding on Customs or the importer. Binding opinions must be obtained from either the National Import Specialist in New York or the Office of Regulations and Rulings in Headquarters. Classification advice on actual importations is determined locally on an entry by entry basis. Customs trains import specialists in the application of the principles of classification and on how these principles apply to specific commodities. Import specialists use the national import specialist, published and unpublished rulings, commodity specific seminars, trade shows, and other research sources to build and maintain commodity expertise. Despite these efforts, we have found that uniformity in classification is less than we would like.

Uniformity, especially uniformity in classification, is a top priority of the Customs Service. This FY we are also concentrating on expanding our pre-entry classification efforts, so that importers will have reliable classification advice earlier. Pre-Entry Classification is a program, currently in development, which networks national import specialists with expert field import specialists to provide importers with classification advice in advance of importation. It shifts the emphasis of the classification function from a transaction based determination to up-front advice for future. This information will be distributed throughout the country through an automated Customs Information Exchange module in ACS. Customs believes increasing pre-classification emphasis from the current five percent to at least 25 percent of import specialist time will greatly increase speed, uniformity and accuracy.

Other programs currently underway which are aimed at increasing classification speed and accuracy include automated entry summary selectivity with strong, uniform national criteria; a Data Reduction Center; and an automated Rulings module in ACS. We also plan to increase training and communications forums for import specialists to support their efforts in maintaining expertise. A re-vitalized quality assurance program is also in development which will increase emphasis on accountability and accuracy in the classification of imports.

Q. Please describe Customs "Pre-Entry Classification" program. When and how will the program be implemented?

A: Pre-entry classification is a program which networks the national import specialists, our most expert, with their experienced field colleagues to provide classification advice to importers prior to importation and entry. Although field advice is not new, this program aims to formalize policies and procedures and to significantly increase the priority given to providing classification information in advance. Obtaining pre-entry classification advice will be quicker than obtaining a binding ruling. Advice provided by field "deputies" will be coordinated through the appropriate national import specialist, and classification decisions will be circulated to all ports of entry within 45 days of the classification review with the importer. Participating importers agree to enter merchandise at all ports according to the advice, and Customs will accept entry. Differences among ports will be resolved internally. Advice will be provided for well settled issues (which most are), and will be given for both Tariff Schedules of the United States Annotated (TSUSA) and Harmonized System classifications. As field import specialists become more experienced in classification under the Harmonized System, Customs plans to make pre-entry classification advice binding at liquidation as well as entry.

Seventeen experienced import specialists have been trained for a national pilot for toys and office machines which will begin August 1, 1988. The pilot will expand to a few additional commodities in September, with evaluation and expansion in early 1989. The program provides increased access to import specialists for the importing community, allowing importers to more effectively estimate their Customs costs and, in most cases, will streamline both cargo release and summary processing for importers, because the issues have been resolved in advance. Pre-entry classification will also promote increased uniformity and accuracy in classification and is critical to intelligent risk asssessment for paperless processing.

Q. What information is planned to be made available through the Automated Commercial System's Customs Information Exchange module. When and how will that module be implemented?

A. The Customs Information Exchange (CIE) module of the ACS System is designed to automate the exchange of information between the field import specialist and national import specialists (NIS). This has traditionally been accomplished through the filing of the Customs Form 6431, "Report of Classification and Value." The import specialist information exchange aspect of the CIE was designed to maintain uniformity of classification, appraisement, admissibility, and statistical verification through the advisory review by NIS of the contemplated actions of import specialists at various field locations.

The automation of the CF 6431 (copy attached) will enable the field import specialist to query the system by TSUSA, importer, manufacturer, and country of origin to determine if the entry of merchandise under consideration has been reported at another port. If so, the import specialist will be able to use a simple function to indicate that the merchandise has also been shipped through his port. If not, he will input the data necessary for the filing of an original CF 6431. This will be simplified through an interface with the existing elements that have been recorded through the entry summary (ABI) and selectivity modules of ACS. By a simple keying process, all known data elements will appear on the screen and the import specialist will only key in those additional elements necessary to complete the form.

The complete CF 6431 will then be sent electronically to the mailbox of the appropriate NIS, with a copy to the field import specialist's supervisor.

The immediate advantage of the system will be to eliminate manual processing of CF 6431's and duplicate processing of reports of like merchandise from several ports. The eventual goal is to provide a vital link in the creation of a master history file that will interface all existing ACS modules making it possible to track every movement of an entry through Customs.

This full utilization of ABI/ACS data elements and the integration with the Summary Selectivity module will be of significant assistance to the import specialist. It will provide automated communications and historical records of importations which will assist Customs in achieving a higher level of uniformity in classification and appraisement.

At this time, work is continuing on the specifications for the automated CF 6431. Programming will begin in October of this year and national implementation is targeted for March-April, 1989.

Attachment

1. TYPE OF REPORT
☐ Normal ☐ Quota Query ☐ Request for For. Inquiry ☐ Other—Specify in Remarks

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

REPORT OF CLASSIFICATION AND VALUE

2126, P&PM

2. SENDING PORT
3. TO N.Y. CST NO.
4. REPORT DATE
5. ENTRY NO.
6. ENTRY DATE
7. DESCRIPTION OF MERCHANDISE
8. EXPORT DATE
9. LAB REPORT NO.
10. SAMPLE ☐ Destroy ☐ Return
11. IMPORTER (Show IRS No.)
12. COUNTRY OF EXP.
13. TERMS ☐ Ex-Factory ☐ CIF ☐ FOB
14. MANUFACTURER OR SELLER/SHIPPER
15. COUNTRY OF PROD.
16. APPRAISEMENT BASIS SECTION 402(   )
17. ADJUSTMENTS a. ☐ Extra Packing b. ☐ Selling Commissions c. ☐ Assists d. ☐ Royalties/Lic. Fees e. ☐ Proceeds
18. RELATIONSHIP ☐ Related
19. INFO. SOURCES (SIR, Reg. Audit, Invoice, Sample, etc.)

20. INVOICE			21. VALUE		22. CLASSIFICATION (TSUSA)	
A. Description	B. Qty. & Unit	C. Price	A. CAV	B. Reply	A. Sender	B. Reply

23. SENDING OFFICER
24. FTS PHONE NO.
25. CURRENCY
26. SENDER REMARKS
27. REPLYING OFFICER/CST No.
28. FTS PHONE No. 668-
29. DATE
30. REPLY REMARKS

ISTRIBUTION: 1(WHITE): CIE 2(WHITE): Return to Sender ☐ CF 6431A 3(BLUE): CIE 4(YELLOW): Replying Officer Copy 5(PINK): Sender's Control Copy ☐ CF 6431A

Customs Form 6431 (092981)

Q: Please explain how programs such as "automated entry summary selectivity", a "Data Reduction Center", and an "automated rulings module" in the Automated Commercial System will increase classification speed and accuracy.

A. Automated entry summary selectivity is based on strong national criteria to ensure that all Import Specialists are identifying entry summaries for bypass or for team review in a uniform manner throughout the Customs Service. Continuous criteria management and evaluation ensures the integrity of the automated entry summary selectivity system. By providing for the automated selection of entry summaries for bypass processing, the system is removing low-risk entry summaries from the commodity teams and setting them up for immediate liquidation. That, in turn, allows more time for Import Specialists to attend to classification of complex or trade sensitive issues.

The automated criteria data base is the heart of the system. Entry summary information transmitted to Customs through the ABI system is automatically compared against that data, sorting entry summaries based on the results of the automated review. The Customs cashier knows instantly, when processing an entry summary, whether an entry summary is bypassed and set for immediate liquidation or is scheduled for team review. Those entry summaries referred for Import Specialist review have been reviewed against the unified data base and the reason for their referral is also instantly available in the automated system. So the low-risk entry summaries are electronically separated and immediately liquidated, and the more complicated entry summaries are referred for Import Specialist review without lengthy manual processing. And both results are achieved using a consistent national data base.

The Data Reduction Center program will allow automated entry summary selectivity to be performed against all entry summaries, not just those processed through the Automated Broker Interface (ABI). This will provide us with the complete data necessary, on line, to ensure consistentency in our review and processing for the entire universe of entry summaries filed.

An automated rulings module will allow us to provide, electronically, all rulings issued by Customs to all field offices. This will ensure that all import specialists have immediate and easy access to all classification rulings issued for the commodity under review.

Q. Please give a detailed description of Customs quality assurance program for classification of imports. What is the current status of the program? When and how will it be implemented?

A. Customs has designed a multi-part program to improve the quality of classification of imports. The program centers around providing, maintaining and sharing the commodity knowledge of import specialists, an educated and responsible trade community and effective analysis and post audit of actions taken.

Recruitment and Training for Import Specialists:

For the past two years, Customs has been rebuilding the quality of its import specialists through aggressive external recruitment. We will continue to pursue all methods of attracting and retaining top quality candidates to this highly specialized position. In addition, we will provide all the training necessary to develop and maintain product knowledge. We continually revise the curriculum in the formal training courses for import specialists to ensure that it is current and challenging. During fiscal year 1989, we plan to continue with extensive training in the Harmonized System and to substantially increase the number of commodity specific seminars. These seminars are one of Customs most effective tools for quality in classification. Funding will be increased for trade publications, textbooks and other research aids. Customs also will limit changes in commodity assignments of experienced team leaders to perserve commodity knowledge.

Automation for Import Specialists:

By the end of this calendar year, there will be approximately 1 terminal for every 1.5 import specialist in the country. Several projects are in development to ensure our import specialists are trained in automation and comfortable with it. Three modules in ACS are currently underway which will significantly increase classification quality.

National Summary Selectivity will be implemented in September. This system features strong national criteria for uniform risk assessment, and automation sharply decreases the chances for error. In a related project, Customs will test a Data Reduction concept in the fall which is intended to capture entry summary line item data for all formal summaries. At that time all summaries will be processed thorough the substantial edits and valiidations programmed in ABI, and all summaries will undergo automated summary selectivity.

An automated method for import specialists to report and share proposed and final classification action with the national import specialist and their field counterparts is planned for April 1989. The automated CIE will allow for quick and easy to use. Dissemination of classification information, such as preclassifications, differences, and accumulated importer histories will be available. To complement this system, Customs is also developing an on-line rulings module which will provide instant access to Customs rulings.

Program Initiatives:

Pre-entry classification will network the national import specialist with his most experienced field counterparts to provide reliable classification advice to importers in advance of importation. This advice will be accepted for entry and summary at all ports. Customs will pilot the program this fall and plans to expand in early 1989, as import specialists become more familiar with classification under the harmonized System. Improving the quality of invoice descriptions is another goal during FY 1989. Customs could do a better job in classification if invoices more adequately described commodities. We have undertaken a cooperative campaign with the trade community to improve invoice quality. In addition, we will standardized the necessary elements for a proper invoice in both the electronic and paper media and develop standard sanctions against those who, after the proper education, fail to comply.

In order to provide this education, Customs plans to augment current staff and establish Import Advisory Centers at its major trading locations, which will provide importers with full time access to experienced import specialists. The purpose of the Centers will be education and consultation to the trade. The Centers will contibute greatly to the quality of information provided and are more necessary than ever with the upcoming implementation of the Harmonized System and Canadian Free Trade.

Finally, Customs has placed a renewed emphasis on quality in all areas. A program to improve broker performance was designed during the past year and is in full operation. Compliance audits for uniformity in entry and summary processing are performed continually, and a major project to maximize information provided on ACS reports is under way. Field staff, dedicated to quality evaluations and reviews, are being established around the country. These professionals will construct profiles, review actual importations, develop valid post audit programs, and evaluate compliance in established policies and procedures. They will anticipate and resolves differences in treatment, correct errors, and eliminate incentives for port shopping. Recruitment for these field positions is underway. During the balance of this year and next, classification quality will be the focus.

Q.	How long does it currently take to obtain a non-binding opinion?
A.	In general, non-binding Customs opinions are issued within a very short time--anywhere from immediately to one or two days from receipt of the request. Non-binding opinions are rendered without extensive research and often without a detailed description. Non-binding advice can be either oral or written. It is current Customs policy that all oral advice be identified as non-binding and all written non-binding advice be rendered on Customs Form 4313, Reply to Inquiry, which clearly identifies the opinion as advisory only.
Q.	How long does it take to obtain a binding ruling?
A.	Currently, binding classification rulings may be obtained from the Regional Commissioner, New York or the Office of Regulations and Rulings in Headquarters. New York rulings are issued by the national import specialists according to guidelines established at Headquarters. Issues which may be answered by New York are generally those not involving highly complex issues and for which there is clear precedent for the principles applied in making the classification determination. The processing time varies dramatically depending on a case's complexity, the number of conferences requested by private counsel, or the amount of research required. New York rulings average 34 days from receipt to issuance. Fifty-eight percent of the cases in Headquarters are processed within the first 30 days, with 79% processed within 90 days of receipt. An agressive effort has been underway in the Office of Regulations and Rulings to reduce case backlog and turnaround time. The effort is successful, and Customs will continue to target a number of older cases each month until all the backlog is eliminated.

In January 1989, with the implementation of the Harmonized Tariff System, Customs will implement a new program where an importer may seek a binding classification ruling from any district director. Requests will be controlled by the national import specialists, but binding rulings will, under certain circumstances, be issued by one of a number of field deputies. For uniformity and accuracy, the national import specialist will determine the appropriate respondent. At the time this program becomes operational, non-binding written advice will be discontinued. Customs believes the district rulings program will provide a significant service to importers as we implement a new tariff and will be more equitable than current non-binding advice, because rulings issued by the field will be binding on the Customs Service at all ports of entry until revoked. If an importer can show that a revocation adversely impacts him, he will be granted a 90 day "grace" period before a new decision is applied.

Q. Does Customs have guidelines or goals on the timeliness of these opinions and rulings?

A. Currently New York tries to issue rulings within 30 days of receipt. Headquarters rulings, usually because more complex issues are involved, often take longer. Effective January 1, 1989, Customs goal is to issue all field rulings within 30 days and continue to issue Headquarters rulings rulings as quickly as possible, and nearly always within 120 days. We believe these are attainable goals for most cases.

Q. Of what benefit is a non-binding opinion to an importer?

A. If the classification issues are simple and all the information needed to make a correct classification determination is available to Customs, non-binding advice can provide importers with the information needed to comply with import statutes and regulations, including documents which may be needed to secure release of the merchandise or to gain a favorable rate of duty. Advice up front can avoid many problems at the time of importation and can, many times, expedite release of cargo and minimize document scrutiny and numerous questions from Customs which may be asked after the merchandise is imported. If, however, the merchandise is complex to classify, non-binding advice can be of less benefit to the importer. With apparal, for example, the slightest change in design, construction, use or a variety of other factors can change the classification, and may result in different quota/visa restrictions or other controls. In many cases, tariff classification is complicated. If all the facts about a transaction are not known when the advice is rendered, actual importation may result in a different decision. Because non-binding advice can be unreliable, Customs will discontinue all non-binding written advice with the implementation of the Harmonized Tariff System in January 1989, and provide binding rulings as described in the previous answer and through the pre-entry classification program described in response to an earlier question.

Q. What percentage of non-binding opinions are subsequently overturned?

A. Customs does not maintain statistics on the number of non-binding opinions which are subsequently overturned. However, the circumstances surrounding the reason an advisory decision was overturned would have to be included in order to draw any valid conclusions.

Q. Does this vary by commodity? If so, which are overturned most often?

A. No doubt the percentages vary by commodity. Trade sensitive merchandise which is often inherently complex and undergoes close scrutiny at all stages of the Customs process would be the most susceptible to change. The complexity of the classification issues involved would have a direct relationship to the number of final classification decisions changed in any category of merchandise. The experience of the import specialist responsible for the merchandise can also be a factor.

SOURCE: U.S. Customs Service

B. Automated Commercial System Implementation

Q. **What is the current status of the system's implementation?**

A. ACS Status

Currently Operational

ABI - exchange of electronic entry data with brokers and importers
AMS - exchange of electronic manifest data with sea carriers
Entry Summary Processing - Validation of the Customs Form 7501 presented by ABI brokers/importers

Collections, Revenue, Liquidations, including user fees

Daily Statement - one check per daily batch of ABI entry summaries per Customs location instead of one check for each entry summary
Census Interface - electronic exchange of entry summary statistics to The Bureau of the Census for ABI transactions - eliminates forms, saves keying for Census, improves accuracy and timeliness of trade statistics
Quota - provides complete Customs control for quota and visa merchandise processing
One-Stop Quota Processing - expedites quota processing for ABI users (hours instead of days)
Quota Query - current quota information provided electronically to ABI users
Cargo Release and Selectivity - identification of high/low risk cargo to expedite release - inspectors can override computer determinations - random inspection algorithm built into system

Paperless Entry - for low risk ABI entries

Entry Summary Selectivity - identification of high/low risk entry summaries for intensive or general import specialist review
Customs Form 3461(ALT) - bar code technology expedites release at northern and southern land border locations
Line Release - networked personal computers/bar code technology speeds release for repetitive low risk shipments at land border locations

Bond Processing - insures bond coverage for Customs
entries

Drawback - provides current information on entries
involved in drawback refunds

FP&F - Fines, Penalties, and Forfeitures Processing

Seized Property - accounts for all Customs seized
property such as autos, boats, aircraft, currency,
general merchandise
Protest - provides Customs control of formal importer
challenges to Customs duty assessment
In-Bond - provides control of shipments unladen in
one port, transported in Customs custody, and
released at another port
TSUSA/HS data - current tariff information provided
electronically to the trade community

Q. Please describe what efforts are either currently underway or are planned to be implemented before the end of FY 1988 to train Customs personnel on the Automated Commercial System.

A: We have addressed the Customs ACS training need with initiatives on three fronts:

1. Customs Headquarters and the Xerox Training Center
2. Customs Service Academy (FLETC - Glynco, Georgia)
3. Regional Training Centers (and District/Port initiatives)

Customs Headquarters training initiatives call for implementation training at field locations as well as follow-up and "refresher" instruction, as appropriate. Through the balance of FY 1988, such training will take place in the areas of Line Release, Manifest, and Cargo Selectivity.

There are nine locations scheduled for Line Release training by Headquarters personnel. They are as follows: Dunseith, ND; Eastport, ID; Raymond, MT; Ogdensburg, NY; Massena, NY; Fort Covington, NY; Roseau, MN; Ranier, MN; and FLETC - Glynco, GA. Line Release is not yet operational in these ports, so the training can be viewed as fundamental, start-up training which is slow and intensive.

The Headquarters Manifest group is projecting a number of trips to the field for AMS pre-pilot, implementation, and refresher training. Special training is also scheduled for Master-In-Bond implementation. Cities to be visited include: Portland, OR; Savannah, GA; Miami, FL; Charleston, SC; Boston, MA; Chicago, IL; Philadelphia, PA; New Orleans, LA; Baltimore, MD; Houston, TX; and Oakland, CA.

At the present time, Headquarters is planning on Cargo Selectivity training at four sites by the end of the fiscal year: Dayton, OH; Little Rock, AR; Chattanooga, TN; and Calexico, CA.

The Xerox Training Center in Leesburg, Virginia, has served as the Customs ACS Help Center since May 1987. Managed by the Office of ACS Operations at Headquarters, the facility consistently draws students who represent all regions. To date, over 1300 individuals have been trained in ACS at the Center. Current projections show a potential of 1600-1800 students per year. The student body at the Help Center has been comprised of the following:

- Academy and Regional Trainers
- Managers and Supervisors (Headquarters and Field)
- Regional/District
  1. ACS Security Administrators
  2. ACS Coordinators
- ACS Specialists (Headquarters and Field)
- Special Focus Groups (National Import Specialists, etc.)

- Interface Users
    1. Trade
    2. Other Agencies
- Opinion Makers (all disciplines)

A special initiative is presently being worked to help accelerate ACS training for Import Specialists. We anticipate training in excess of 200 of their number at Xerox by the end of the calendar year. This coincides with the projection that by the end of FY 1988, there will be one ACS terminal for each Import Specialist team in all of the major districts.

The Customs Service Academy at FLETC - Glynco, Georgia, has been offering ACS training since February 1987. To date, approximately 3500 students have been trained in ACS at the Academy. Current projections show a potential of 4000 students per year. ACS material is currently contained in virtually every Customs course offered. ACS instruction is included in the courses for the following disciplinary areas:

- Commercial Operations (basic and advanced)
- Inspection and Control (basic and advanced)
- Enforcement (basic and advanced)

ACS is also included in the courses for special focus groups such as the Operational Analysis Staff, Intelligence Analysts, Regulatory Auditors, Entry Control Officers, Fines & Penalties Officers, and the Drawback Liquidators.

The Office of Trade Operations at Headquarters has indicated that a vigorous ACS/Fines, Penalties, and Forfeitures training program is underway for FP&F personnel. In January 1988, a 2-week training class was conducted at Glynco for FP&F paralegals. This course will be repeated in October 1988 and again in March 1989 in order to accommodate basically all FP&F staff.

Regional training centers are contemplated for all seven regional locations. New York has been operational since February 1988, and Los Angeles opened its doors in April. Headquarters trains the regional training groups at Xerox in ACS matter, while OPM trains them on location as trainers.

Although Houston and Miami ACS trainers have been prepared as such, training centers at those locations are still being developed. Training personnel, however, are being used to the maximum extent possible to train Customs employees in their own particular discipline in on-the-job activities. Houston does expect to have one class in their new computer laboratory by the end of FY 1988.

It is interesting to note that the Southeast Region (Miami) has recently hired three computer specialists to monitor and analyze hardware, software, and training needs for all automated systems. It is hoped that the knowledge, skills, and abilities of these individuals will help to "facilitate a smooth transition to an automated environment."

Chicago and New Orleans trainers have been scheduled for training at Xerox during the August/October time frame. The Boston training body will be at the Help Center during the September/November period. Again, these trainers will also be trained as trainers on location by OPM.

The regional training centers, depending on location, should have the capacity to handle 400 to 600 students per year and will be looked upon to provide the following:

- basic functional training to regional personnel
- updated ACS expertise for all disciplines
- cross-disciplinary training
- support for rotational personnel
- local problem solving
- local support for other system users

ACS training initiatives will continue to expand on all three fronts. These efforts will be supported by:

- ACS User Assistance Guides (printed and on-line)
- expansion of computer-based training
- expansion of video training aids
- standard "national" lesson plans
- sharing of training materials among training bodies

National ACS Training Projections
(July 1 - September 30, 1988)

Managers:	113
Import Specialists:	468
Inspectors:	804
Enforcement/Agents:	375
Trainers:	133
Other:	298
Total: (service-wide)	2191

Q. Discuss the reasons for shutdowns of the Automated Commercial System and the Treasury Enforcement Communication System. Do these shutdowns cause problems? If so, can they be avoided?

A. Scheduled shutdowns occur for the following reasons:

1. The IBM Customer Information and Control System (CICS) is a third party software package that requires maintenance functions that cannot be accomplished while CICS is running. Replacement of this package is under study. There is also the general problem of memory fragmentations and accumulation. The source of this problem involves configuration, load, application programming techniques, and practices, and the CICS architecture itself and as such does not permit one easy solution. All of these areas are being addressed with the goal of increased availability to users.

2. Installation of vendor hardware software upgrades. All scheduled shutdowns are accomplished during early morning hours when users are least likely to be affected and are planned to minimize outage. Any outage, no matter when scheduled, has the potential to delay or inconvenience a user. All possible efforts are being directed toward eliminating all unscheduled, and to the maximum possible, scheduled outages.

The data base management systems which support both ACS and TECS II are currently available for longer periods of time than ever before. In the past, there were three scheduled time frames when the data base was unavailable:

5:30 AM to 5:45 AM Monday through Saturday.

11 PM to Midnight Monday through Friday. This outage was needed to accommodate data base saves. Due to a recent restructuring of the way data base saves are performed, this outage no longer exists.

1 AM to 11 AM Sunday. This outage still exists since we still must have some down time to perform data base maintenance. It should be noted this outage applies only to the ACS system. The Data

Base Branch in the Office of Data Systems continues to research both software and procedural changes to initially reduce and eventually eliminate this outage.

The ACS data base is currently available 11 AM Sunday through 1 AM the following Sunday. The TECS II data base is currently available 24 hours a day, 7 days a week. Outside of the aforementioned scheduled down times, the only other down times are of IPLs (Initiate Program Load) of the associate machine and any extraordinary situation beyond the control of the data center staff. It needs to be noted that from time to time, portions of either data base may be made unavailable for emergency data base maintenance.

SOURCE: U.S. Customs Service

C. Cargo Examinations

Q. Number of Centralized Examination Stations (CES's)?

A. There are currently 117 CES's in the country. Attached is a list of the current CES's and their locations.

Q. Number of Intensive examinations performed?

A. Attached is a breakdown, by districts and regions, of the number of merchandise examinations performed in the United States for FY 1987 and 1988 to date (February 1988). (See II.D.)

Q. Number of tailgate examinations performed including a breakdown of the number of such examinations performed at a CES?

A. The U.S. Customs Service does not maintain statistics concerning different levels of examination, other than full containers examined. Furthermore, as a general policy, "tailgate" or other perfunctory examinations, whereby inspectors view only those pieces of the shipment which are at the rear of containers, are no longer being performed by Customs employees. Inspectors are now required to designate specific pieces or ranges of piece numbers and, depending on the level of examination required, examine merchandise from different locations in each container.

Q. Number of total "devan" (full strip) examinations performed including a breakdown of the number of examinations performed at a CES?

A. Attached is a breakdown, by region and district, of the number of "sea" containers which were examined 100 percent for FY 1987 and 1988 to date (February 1988). We do not maintain statistics on the number of trucks or airline containers which are devanned. Furthermore, the Customs Service does not maintain records concerning specific locations where the 100 percent examinations were performed, we are unable to determine how many were performed at CES's. (See II.D.)

Q. Number of examinations performed which were more than a tailgate examination, but less than a total "devan" examination, including a breakdown of the number of such examinations performed at a CES?

A. With the exception of total "devans," the Customs Service does not maintain statistics concerning the different levels of container examinations. Therefore, we are unable to provide this information.

Q. What is the discrepancy rate?

A. Customs does not maintain statistics on the total number of discrepancies, i.e. detentions and seizures, as a result of the examination of cargo. Therefore, we are unable to provide the discrepancy rate.

Q. Average cost to the importer of an intensive examination.

A. The following breakdown of average importer exam costs are estimates, as Customs does not pay or assess any costs for examining merchandise except in special circumstances. Other factors affecting importer costs includes such things as:

1. Method of arrival, e.g. truck, train, vessel or aircraft.
2. Local labor agreements.
3. Hauling distance and time to exam site.
4. Type of cargo, e.g. palletized or loose.
5. Amount devanned.
6. Special requirements, e.g. perishable cargo.
7. Special agreements between importers.
8. Special agreements between importers and trucking companies.
9. Availability of laborers.
10. Availability of special unloading equipment.
11. Container size, e.g. 20 footer or 40 footer.
12. Method of charge, e.g. per wt, cube, container, or pallet.

Region District Port	Exam Costs * (Per Container)	Drayage
Northeast		
Providence	$350 - 750	$0 - 125 one way
Philadelphia	$400	$75 one way
Boston	$300 - 1400	$150 one way
Bridgeport	$450 - 850	$175 one way
Baltimore	$125 - 525	$0 - 175 one way
New York		
Newark	$20 per carton plus $40 admin overhead	$100 - one way

Region District Port	Exam Costs* (Per Container)	Drayage
North Central		
Chicago	$150 - 450	UNK
Cleveland	$350	$50 - 80 one way
Cincinnati	$500 - 600	- do -
Toledo	$300 - 350	- do -
Columbus	$150 - 250	- do -
Indianapolis	$125 - 150	$35 - 45 one way
Louisville	$225	UNK
Great Falls	-	-
Denver	$225	UNK
Salt Lake/City	$125 - 350	UNK
Sweetgrass	$150	UNK
Minneapolis	$250 - 350	$75 one way
Duluth	- do -	- do -
Milwaukee	- do -	- do -
Pembina	$200	UNK
St. Louis	$225	Included in exam cost
Kansas City	$200	- do -
Southeast		Included in exam costs.
Savannah	$250	
Atlanta	$250	
San Juan	$200	
Charleston	$200 - 400	
Norfolk	$350	
Newport News	$350	
Richmond	$300 - 450	
Wilmington	$275 - 350	
Miami	$100	
West Palm Beach	$150	
Tampa	$350	
Jacksonville	$250	
Orlando	$300	
South Central		
Mobile	$150	UNK
New Orleans	$166	UNK

Region District Port	Exam Costs* (Per Container)	Drayage
Southwest		Included in exam costs.
Houston	$300 - 1500	
Dallas	$174 - 300	
El Paso	$150 - 300	
Nogales	$ 50 - 300	
Laredo	-	
San Antonio	$100 - 300	
Pacific		Included in exam cost.
Los Angeles	$240	
San Diego	$ 60- 250	
Portland	$ 75- 450	
Seattle	$100 -300	
Takoma	$200 -600	
Honolulu	$200	
San Francisco	$ 65- 400	

* Almost all costs are related to Centralized Examination Stations (CES's) because CES operators submit pricing information to Customs as part of the selection process.

Q. Average delay to the importer for an intensive examination. (Considering all factors, not just delays directly attributable to Customs).

A. Following is a list of average processing times for intensive cargo examinations at major locations throughout the country. These estimates are based from time of entry presentation to Customs release and include examination time. Although we have attempted to give average delay times from carrier arrival to entry presentation, it is not an area we monitor.

There are a number of factors, especially at seaports, which delay the movement or the devanning of cargo but are not within Customs control.

These factors include:

1. Availability of labor.
2. Availability of equipment e.g. are containers stacked or on chasis.
3. Importers ability to arrange for cartage to the exam site expeditiously.
4. Seasonal flutuations in cargo volumes.
5. Efficiency of the importer's agent, e.g. can he pre-file entries?
6. Type of cargo, e.g. palletized or loose

Region District Port	Arrival to Entry Presentation	Entry to Release Incl Exam Time
Northeast		
Providence		1-2 days
Philadelphia		3 days (Seaport) 1 1/2-2 hours (Airport)
Boston		2 days
Bridgeport		1 1/2 days
Baltimore	2 days	5-6 1/2 days

Region District Port	Arrival to Entry Presentation	Entry to Release (Incl Exam Time)
New York		
Newark		1-4 days
JFK Airport	3 days	1-1 1/2 days
North Central	UNKNOWN	
Chicago		1 Day
Cleveland		1 day
Detroit		2 1/2 days (containers) 2 hours (Airport)
Great Falls		Same day
Minneapolis		1 day
Pembina		3 hours
St. Louis		1 day
Southeast	UNK	
Savannah		2 days
Atlanta		6 days
San Juan		1 day
Charleston		2 days
Norfolk		1 day
Wilmington		2 days
Raleigh-Durham		1 day
Winston Salem		1 day
Miami		2-3 days
West Palm Beach		4 hours
Port Everglades		2 days
Tampa		1 1/2 days
Jacksonville		2 days
Orlando		1 day
South Central		
Mobile	4 days	1 day
New Orleans	2 - 4 days	4 - 8 day

Region District Port	Arrival to Entry Presentation	Entry to Release (Incl Exam Time)
Southwest		
Houston		1-2days (Seaport) 2-4 hours(Airport)
Dallas		2 days (Surface) 1 day (Airport)
Laredo		1-6 hours
San Antonio		1hr-1day
Hidalgo		1-6 hours
Brownsville		1-6 hours
El Paso		1-3 hours
Nogales		1-3 hours
Phoenix		2-4 hours
Pacific		
Los Angeles		Same day (ABI) (Airport) 1 day (All other (Airport) 1 day (Harbor)
Anchorage		3 hours
San Diego		Same day
Portland		Same- 1 day
Seattle		Same - 1 day
Takoma		1 day
Honolulu		3-4 hours
San Francisco		4-5 days (Harbor) 1 day (Airport)

SOURCE: U.S. Customs Service

Q. How many national selection criteria are currently active in the Automated Commercial System? How many are local criteria? How many of the total require "document review"? How many individuals have authority to set criteria? What standards are used to ensure the procedures for reviewing and purging the criteria?

Does the Automated Commercial System provide those who set the criteria with feedback on the number and the results of each intensive examination performed as a result of a particular criterion? If not, why not? Does the Automated Commercial System provide those who set the criteria with the number of times intensive examinations called for by the criteria are overridden? If not, why not?

A. Total national criteria active in the ACS selectivity module is 171,090 (includes harmonized elements). Active local criteria totals 61,254. Criteria requiring document reviews total 170,930 (national 145, 489-local 25,441). There are 170 individuals with access to the criteria setting functions. New York OAS is responsible for coordinating, reviewing, inputting and maintaining the national criteria. In terms of national enforcement criteria, this responsibility is complete. The National Import Specialists (NIS) are responsible for other agency and classification criteria. The New York OAS in the person of the DIO-O is responsible for monitoring the ACS Selectivity role at OAS locations nationwide. All OAS submission from other locations are reviewed by the New York OAS, who input pertinent criteria. There are no official parameters for local criteria issued by Headquarters. At this time standardized local parameters, where they exist at all, are the decision of each district. The feeling is that local parameters for local criteria should vary depending on local issues, risks and activity. National OAS parameters include: review of the history of importations, violations, and other enforcement data to determine the need for criteria input. All enforcement criteria input into the system is given a deletion date. This date can range from one day to as long as a year. National enforcement criteria is generally given a three month deletion date. While criteria review can occur at any time, it is mandatory before it is due to automatically delete in the system. The reviewer will examine summaries of results of examinations called for by the criteria, and make a determination to allow the deletion, extend the life of the criteria, or modify it. In the case of local criteria input into the national system, the local office is notified of the review and the decision reached by the reviewer. The local office has an opportunity to present more information on the criteria or parties involved; lacking this, the reviewers recommendation is followed. ACS provides (via data query) information on the number and results of intensives due to specific criteria. Information is also provided on the number of overrides of intensives criteria. This information is used when criteria is reviewed prior to its deletion date. Other than the mandatory review based on the deletion date, in order to review criteria at other times, the reviewer must query the system.

Q. What percentage of all intensive examinations performed in FY 1987 were performed as a result of Automated Commercial System Cargo Selectivity? How many were performed as a result of a manual override from a general examination to an intensive examination? Please compare the rate of discrepancies found in each of these categories. Also, compare these rates to the rate of discrepancies found by intensive examinations performed as a result of random selection.

A. For FY 87, the figures on intensive examinations performed are as follows:

Total Intensives	- 632,256	(16 percent of all entries)
1. Criteria	- 369,439	(57.7 percent)
2. Random	- 26,677	(4.2 percent)
3. First Time Importer	- 166,197	(26.7 percent)
4. Overrides (General to Intensive)	- 71,153	(11.2 percent)

For FY 1987, the percentage of discrepancies are:

1. Criteria	- 56-59 percent
2. Randoms	- less than 1 percent
3. First Time Importer	- 10 Percent
4. Overrides (General to Intensive)	- 25-30 percent

The use of the term "generals" when referring to overrides may be misleading because there are no figures which indicate how many of those entries were general with document review ACS criteria or were clean generals, i.e., no criteria.

As inspectors continue to find discrepancies and input that information into the data base, the need for overrides will diminish. Additionally, ACS program changes are under study which will allow inspectors to vary random selections according to local situations and risks. This will greatly improve the success of random selections.

Q.: Of the total number of intensive examinations performed during FY 1987 and year-to-date FY 1988, how many involved shipments of textiles and/or wearing apparel?

A.: Total number of intensive exams by line item: 1,066,875. Total number of intensive exams of textiles/wearing apparel: 297,269. Hence, intensive exams of textiles constitute 27.86 percent of all intensive exams.

Q. How many Centralized Examination Stations (CES's) does Customs currently staff?

A. Customs currently staffs 117 CES's.

Q. What entity operates these CES's?

A. All of the CES's which are currently established are privately operated. These CES's are operated by a variety of entities, including Container Freight Station operators, companies in the transportation business, terminal operators, and customhouse brokers.

Q. How many CES operators have written agreements with Customs?

A. Detailed below is a list of the districts who have written agreements with CES operators:

Northeast Region: 1-Baltimore;

North Central Region: 6-Chicago, Cleveland, Great Falls, Milwaukee, Minneapolis, and Pembina;

Southeast Region: 2-Tampa and Norfolk; and

South Central Region: 1-New Orleans.

Q. How does Customs select CES operators?

A. The final determination regarding the selection of CES operators is the responsibility of local district managers. However, the decision to designate a specific facility as a CES is made only after Customs managers consult with a wide cross section of the trade in the area where the CES will be located. The selection process is subject to review by customs regional offices.

During the selection process, district managers will solicit bids from all parties (usually through the use of "Pipelines" or other "Information" notices) interested in operating a CES. In these pipelines, interested parties are advised about the requirements for operating a CES. The trade is consulted by district management to receive input concerning prospective CES operators, facilities, and the locations of CES's. The trade is consulted to ensure that the local needs of the trade are considered, and CES's are not designated at unacceptable sites.

Customs then evaluates the proposals, from each firm who wishes to operate a CES, and selects the firm which can establish a CES that is most advantageous to both Customs and the trade.

The costs associated with the examination of merchandise at CES's have always been a concern to Customs. The way the program was established, local district managers in concert with the trade designate a CES. The trade, in these discussions, advises district managers concerning what are reasonable costs and what are exorbitant costs for performing examination related costs. The trade's advice would then be utilized by district managers when they make their final selection. In addition, district managers may revoke CES privileges for those CES operators who charge exorbitant fees.

Q. How many CES operators was Customs involved in selecting?

A. Customs was involved in selecting all of the firms who are operating CES's.

Q. What authority does Customs have to require importers, ports, transportation companies, or container freight stations to bear the costs for transporting, unloading, and reloading cargo designated for intensive examination? Does that authority depend on the purpose of the intensive examination?

A. By virtue of 19 USC 1499, the appropriate Customs officer "shall designate the packages or quantities covered by any invoice or entry which are to be opened and examined . . . and shall order such packages or quantities to be sent to the public stores _or other places_ for such purpose." Pursuant to the authority provided in 19 USC 1624, the Secretary of the Treasury promulgated regulations which require the importer to "bear any expense involved in preparing the merchandise for Customs examination and in the closing of packages" if the examination occurs anywhere other than "the public stores." 19 CFR 151.6, 151.7(b).

In 1928, the expense issue was addressed by the Attorney General in an opinion fully supporting Customs' position (35 O.A.G. 431). As stated by the Attorney General, "[t]here is no reason to imply an undertaking on the part of the United States to pay the cost of acts which it has power to require others to perform at their own expense." _Id_. at 434.

This authority does not depend on the purpose of the intensive examination as long as the purpose is bona-fide, that is, "to assure compliance with all applicable laws, regulations, and instructions which the Secretary of the Treasury or the Customs Service is authorized to enforce [or to assure that the merchandise] to have been truly and correctly invoiced and ... compl[ies] with the requirements of the laws of the United States." 19 USC 1499, see also 35 O.A.G. 431.

SOURCE: U.S. Customs Service

D. Cargo and Passenger Policies

Q. What is Customs policy regarding the limits of acceptability, in time, for the clearance of cargo? If a policy regarding this does not exist, what is Customs goal or general guidelines regarding the limits of acceptability in the clearance of cargo? Are these policies, goals or guidelines uniform from port to port?

A. Although there are presently no national Customs guidelines establishing specific time limits for the release of cargo, local Customs managers in the exercise of their managerial discretion do, as a rule, set minimum cargo processing times. Servicewide, the average cargo processing time for the entry is a 4 hour maximum turnaround, although electronic entry submissions (ABI) are turned around in considerably less time.

As stated, the average turnaround time for the entry is a maximum of 4 hours, the times however for examination may be as little as 20 minutes or as great as 8 hours depending upon the nature of the merchandise to be examined.

With the advantages that automation offers, Customs goal is to offer predictable cargo release times for automated brokers who qualify, establishing an all electronic scenario from entry submission to collection.

Q. What is the Customs policy regarding the limits to acceptability, in time, for the clearance of passengers? If a policy regarding this does not exist, what is Customs goal or general guidelines regarding the limits of acceptability in the clearance of passengers? Are these policies, goals or guidelines uniform from port to port?

A. It is the policy of the U.S. Customs Service to complete the processing of arriving international passengers within 45 minutes of their arrival at the airport terminal gate. This assumes that the facilities for processing arriving international passengers are adequate, and that the airlines meet established schedules, and excludes secondary processing.

The Customs Service has placed a strong emphasis on facilitating the traveling public by refining inspection procedures and introducing expeditious processing systems. Our strategy has been based upon selective inspection techniques that target those individuals and operational areas that will yield the highest enforcement return.

Q. What is the process used by Customs to develop or change cargo processing and clearance policies and procedures?

A. Processes used to develop or change policies and procedures may vary from project to project but, generally, if they are national policies affecting processing at ports of entry throughout the country the following format is used:

1. A project is proposed at any level from a Customs aid to the Commissioner or, in some cases, a broker, importer or a congressional office.
2. The idea is written up and sent to various offices for comment.
3. A group of Customs experts is gathered to discuss the various aspects of the project such as: legality, operational feasibility, costs, etc.
4. The Project is given a priority by top Customs management.
5. The project is tested at one or more field level offices.
6. The project is evaluated, revised, and retested if necessary.
7. Federal Register Notice is given and comments analyzed if necessary.
8. If it is to be implemented nationally, a Customs Directive is issued. If deemed necessary, an instructional team will be sent to field offices, brokers groups, and others in the private sector to explain and implement the policy.

Q. Who can initiate new cargo policies procedures?

A. New cargo policies procedures can be initiated at any level provided they are in accord with established higher level policies and procedures; however, any policy that has a national impact must be approved by our Headquarters office. In some cases, the Commissioner must approve, in others the appropriate assistant commissioner and at the lowest level the Director of Cargo Enforcement and Facilitation.

Q. What is the criterion or process used to select the port or district at which to first implement a new policy or procedure?

A. The process for selecting the port or district of implementation also has many variables;

1. Does the policy involve only seaport cargo, airport cargo, truck traffic, or a combination of any or all?
2. Does the policy involve brokers or importers? If so, we find that implementation works better at ports at which brokers and importers volunteer.
3. Brokers or importers may suggest their implementation priorities.
4. Equipment availability and installation is included. For example, the installation of telephone lines may be accomplished immediately at some locations and take months at others.
5. In some cases, implementation may take place at all ports simultaneously.
6. Implementation schedules usually start where the project has been tested. This testing is passed around so that one port is not always a test port.

Q. What is the process used by Customs to develop or change passenger processing and clearance policies and procedures?

A. Processes used to develop or change policies and procedures may vary, but in general, if they are national policies affecting passenger processing at ports throughout the nation, the following format is used:

1. Suggestions and ideas for change and/or improvement to policies or procedures may be submitted from any level employee and in some cases from outside the Customs Service, such as those submitted by a congressional office or other concerned organization.
2. A panel comprised of Customs personnel from various offices evaluate the proposed change in terms of legality, operational feasibility, costs, and impact on the traveling public.
3. Having been found to have merit, the proposal is then tested at one or more field offices and then evaluated from field test data.
4. If necessary, Federal Register notice is given, and comments analyzed.
5. If the new proposal is to implement nationally, a Customs Directive is issued. If necessary, an instructional team will be sent to the field to explain and to help with implementation of the new procedure.

Q. Who can initiate new passenger policies and procedures

A. New passenger processing policies and procedures must be in accordance with established Headquarters guidelines. All procedures and policies which have national impact must be approved at the Headquarters level. In some cases, the Commissioner of Customs must approve, in other cases the Assistant Commissioner of Inspection and Control may approve. Regional Commissioners and District Directors also have the authority to initiate policies and procedures as long as they remain within the parameters established by Headquarters.

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Q. What is the criterion or process used to select the airport or port at which to first implement a new policy or procedure?

A. The process for selecting the airport or port at which a new procedure or policy is implemented has many variables. They are as follows:

1. The airport or port selected must be representative of service capabilities.
2. Equipment availability and instalation if required, along with workload, threat analysis, staffing, and impact to existing operations, weigh heavily in the selection process.
3. The availability of proper and adequate facilities must be determined to achieve optimum results.
4. In certain enforcement operations, carriers from certain countries are impacted more than others. Since these carriers arrive at only designated airports, their availability may dictate the location(s) of certain new policies and procedures

Q. What cargo processing and clearance policies and procedures are set at the local level (region, district, or port)?

A. Cargo processing and clearance procedures are set at the Headquarters level. However, regions, districts, and ports may modify procedures so that they may best function in their respective environments. For example, some ports have full devanning capabilities within the port complex while others must rely on centralized examination stations. Other locations may find it necessary to limit less than carload (LTL) shipments to hours of daylight because of officer safety.

Q. What passenger processing and clearance policies and procedures are set at the local level? (region, district, or port)

A. All passenger processing and clearance policies and procedures are set at the Headquarters level. However, regions, districts, and ports may modify such procedures, within guidelines, so that they may best function in their respective airport environments. For example, processing arriving passengers through a one-stop or two-stop system, through citizen by-pass, or the red-green processing system, with or without the presence of rover inspectors, depending on the logistics of the particular facilities involved.

Q. What is Customs policy regarding hours of operation? Who sets the hours of operation for specific offices and ports? What factors are considered when setting the hours of operation for specific offices and ports?

A. In accordance with Section 101.6 of the Customs Regulations (copy attached), the general hours of operation are 8:30 a.m. to 5 p.m., Monday through Friday. Provision is made, however, to adjust or extend these hours as local conditions dictate. The authority to change or adjust hours has been delegated to our Regional Commissioners and District Directors.

The major factor in extending or adjusting hours of operation is workload. The workload, for the most part, is dictated by the importing community and the traveling public. Other factors affecting hours of operation include:

1. Hours of operation for coexisting Canadian or Mexican land border ports,
2. Seasonal fluctuations in workload, e.g. some ports and stations are open only in the summer, and
3. Special trade requirements, e.g. air couriers operate during night hours at their hubs.

SOURCE: U.S. Customs Service

E. Courier Operations

1. There are no differences in the policies, procedures, or techniques used to examine merchandise at express hubs as compared to any other air cargo or mail examination facility. The major advantage for Customs, however, is that couriers provide an advance manifest with greater detail than currently required by regulation. The additional information includes the name and address of the shipper and consignees as well as the TSUSA number of the cargo. This allows the inspector to determine, in advance of the arrival of the merchandise, the shipments warranting examination.

2. The examination rate at courier hubs, as of April 30, 1988, is averaging 23%. This figure is above the national average of 18% due to a two month program that requires the 100% inspection of all textile shipments.

3. Customs does not maintain statistics on the total number of discrepancies, i.e. detentions and seizures, as a result of the examination of cargo. Therefore, we are unable to provide the discrepancy rate.

QUESTION In what form does Customs receive advance manifests from couriers?

ANSWER: The manifests are generated by the carrier by their computer systems on computer paper.

QUESTION How do those manifests differ from manifests submitted by other carriers?

ANSWER: The express carrier's manifests provides Customs with the name and address of both the shipper and consignee, a commodity description (and, if the merchandise is valued over $250, the commodity TSUSA classification), weight, country of origin, air waybill number and a piece count. The air cargo manifest requirements are: air waybill number, weight, a piece count and description of the merchandise. The sea cargo manifest requirements are: name of shipper and consignee, notifying address, bill of lading number, package marks and numbers, number of packages, description of the merchandise, and weight.

QUESTION Under what terms or conditions would Customs make the same services available to other carriers?

ANSWER: At present, the Customs Service would make the same services available to any carrier that would provide Customs the detailed advance manifest information, deliver its cargo to a centralized location, have a Customshouse broker on site to immediately prepare and present the entry release information to Customs, and agree to reimburse Customs for its inspectional services.

However, the Customs Service has become concerned about the increasing proliferation of the express hubs as well as the increasing volume of cargo being imported using this mode of transportation. As such, Customs developed a set of proposed regulation specifically for cargo imported by express consignment carriers. These proposed regulations, published in the Federal Register on December 16, 1988, establishes an approval process for express consignment carriers and their facilities that, in addition to other requirements, mandates participation in Customs data processing systems for manifest, entry, and entry summary processing. These procedures, when finalized, will be made available to all operators, carriers, and

	other entities that can meet the criteria set out in the regulations.
QUESTION	Can any carrier enter its shipments as importer of record? If not, why not?
ANSWER:	According to our Office of Regulations and Rulings, the express carrier, or any carrier, can be the importer of record when the shipper of the merchandise agrees, in a contractual agreement as specified on the carrier's air waybill or other appropriate documentation. This agreement basically is a condition of carriage for the carrier. Therefore, as the importer of record, the carrier has the authority to designate a Customshouse broker who will make entry for the merchandise being imported into the United States.

QUESTION: In your response to our question of June 28, 1988, regarding the entry of shipments by the carrier as the importer of record, the response is unclear. Please clarify your response.

ANSWER: Our response to question regarding the carriers right to enter merchandise was wrong. Basically, a carrier may enter its shipments when it is also the "importer of record", i.e. the owner or purchaser of the merchandise. Only the "importer of record" can file an entry.

In situations where the carrier is the "nominal consignee", i.e. is designated by the owner or purchaser as his agent in a contractual agreement, the carrier may designate a licensed customhouse broker to make entry on his behalf. In these cases the broker is the "importer of record".

In situations where the carrier is neither the "importer of record" nor the "nominal consignee", it is not involved in the entry process.

The basis for this decision was as a result of the implementation of amendments to section 484 of the Tariff Act of 1930 in Public Law 97-446. A copy of Customs policy directive 3530-02 of November 6, 1984, explaining the "right to make entry" is attached.

Attachment

SOURCE: U.S. Customs Service

ORIGINATING OFFICE: CO:T:D:E

DISTRIBUTION: P-35

POLICIES & PROCEDURES MANUAL

CUSTOMS DIRECTIVE

NUMBER: 3530-02

ISSUE DATE: November 6, 1984

SUBJECT: Right to Make Entry

1. Purpose

The purpose of this Directive is to clarify the changes made to section 484, Tariff Act of 1930, as amended, as a result of the implementation of Public Law 97-446.

2. Background

On January 12, 1983, P.L. 97-446 effected a number of tariff changes. Specifically, section 484 was amended to provide that only the owner, purchaser or licensed customhouse broker has the right to make entry. Since inception of P.L. 97-446, and the lack of implementing regulations, numerous questions have arisen concerning the interpretation of this change. On January 19, 1984, Customs Directive 3530-01 was issued which established guidelines for determining the right to make entry. After additional comments were received and more detailed information became available, the above Directive was amended by telex number 04494 on May 8, 1984. The telex expanded the definition of "owner or purchaser" and advised that the Customs Directive would be rewritten.

3. Action

The following guidelines are to be observed in the determination of the right to make entry under 19 U.S.C. 1484.

a. Right to Make Entry

Section 484 provides that only the "importer of record" has the right to make entry. "Importer of record" is defined as the owner or purchaser of the goods, or when designated by the owner, purchaser, or consignee, a licensed customhouse broker. A nominal consignee may designate a customhouse broker to make entry on his behalf but may not make entry on his own behalf. If a customhouse broker makes entry for a nominal consignee, the broker must appear as importer of record.

The purpose of the amendment to section 484 was basically to prevent so-called "nominal consignees", other than licensed customhouse brokers, from filing entries and thereby engaging in the transaction of Customs business without a license.

Customs Form [illegible]

b. Bonding

In the situation above where a nominal consignee designates a customhouse broker to make entry on his behalf, the broker must be listed as importer of record (both on the entry and entry summary) and the broker's bond would, therefore, be liable for subsequent filing of the entry summary and payment of estimated duties. Under 19 CFR 141.20, the broker may later transfer any subsequent liability to the actual owner and provide a superseding bond in the name of the owner. But the broker, in this instance, must appear as importer of record on both the entry and entry summary.

c. Owner or Purchaser Defined

The terms "owner" or "purchaser" would be any party with a financial interest in a transaction, including, but not limited to, the actual owner of the goods, the actual purchaser of the goods, a buying or selling agent, a person or firm who imports on consignment, a person or firm who imports under loan or lease, a person or firm who imports for exhibition at a trade fair, a person or firm who imports goods for repair or alteration or further fabrication, etc. Any such owner or purchaser may make entry on his own behalf or may designate a licensed customhouse broker to make entry on his behalf and may be shown as the importer of record on the CF 7501. The terms "owner" or "purchaser" would not include a "nominal consignee" who effectively, possesses no other right, title, or interest in the goods except as he possessed under a bill of lading, air waybill, or other shipping document.

Examples of nominal consignees not authorized to file Customs entries are courier services, freight consolidators who handle consolidated shipments as described in paragraph j. below, and customhouse brokers who are not licensed to transact Customs business in Customs districts where a shipment is being entered.

d. Carrier Responsibility

The carrier of the imported goods may certify any person to be the owner, purchaser, or consignee. Further, section 484(h) states that the carrier shall not so certify a person to be the owner, purchaser, or consignee unless "it has actual knowledge of or reason to believe in the accuracy of such certification." This also would require Customs to exercise "due diligence" to assure the veracity of a carrier's certificate. Additionally, a carrier may not obtain the services of a customhouse broker to make entry of shipments they carry unless the carrier is the owner, purchaser, or consignee of the goods it is carrying. (Only the owner, purchaser, or consignee may designate a broker to make entry.)

e. Declaration on CF 3461 and CF 7501

Only the importer of record (owner, purchaser, or customhouse broker) may execute the declaration on the entry or entry summary.

f. Consignee's Inability to Secure Service of an Agent

In the event that a nominal consignee cannot secure the services of a licensed customhouse broker to transact Customs business on his or her behalf, entry of merchandise must be denied. In that event, the consignee may notify the owner or purchaser to designate a licensed customhouse broker to make entry for them or they could make entry on their own behalf as importer of record. Or, the consignee could obtain written authorization from the owner or purchaser to act as a limited agent on their behalf and prepare the entry documents for the owner or purchaser (however, the owner or purchaser must be listed as importer of record and would have to sign the documents). In no case could the nominal consignee make entry in his own name, even through a licensed customhouse broker.

g. Signing the Entry or Entry Summary

Only the owner, purchaser or a properly designated customhouse broker may sign the entry or entry summary. It should be noted that the owner, purchaser or broker need only sign the entry and is not required to "fill out" the form itself. This would allow for delivery of the documents prepared by a third party as long as the documents were signed by the "importer of record."

h. Messenger Services

In those instances where the owner, purchaser, or licensed customhouse broker utilizes the services of a messenger to deliver the entry or entry summary to Customs, section 484 is satisfied because simple delivery of documents shall be considered as a clerical function. As long as the entry documents have been signed by the "importer of record," delivery of said documents to Customs by a courier (or handing of documents to Customs by a truck driver) does not violate the requirements of section 484.

i. Immediate Delivery

Since the immediate delivery procedure is not entry, section 484 and the amendments to it do not affect I.D. procedures. However, the subsequent filing of the entry/entry summary must meet the criteria of 19 U.S.C. 1484.

j. Consolidated Shipments

Where a freight consolidator acts as a consignee on behalf of an exporter to handle Customs matters on behalf of numerous U.S. purchasers, such freight forwarder is not the owner or purchaser of the goods and, therefore, does not have the right to make entry either with or without permission of the actual owner. Under the law, as the nominal consignee, the freight forwarder does have the right to designate a customhouse broker to make entry on his behalf.

k. Warehouse Entries and Withdrawals

The filing of an entry or entry summary for warehouse must be made by the importer of record (i.e., owner, purchaser, licensed customhouse broker). Further, by regulations (19 CFR 144.31) only the importer of record would then have the right to withdraw merchandise from the warehouse unless an actual owner's declaration and superseding bond have been filed (19 CFR 141.20) or the right to withdraw the goods has been transferred (21 CFR 144.21-28).

l. T.I.B and Permanent Exhibition

Merchandise to be entered under T.I.B. or Permanent Exhibition must be entered by the importer of record (i.e., the owner, purchaser, or licensed customhouse broker). It is realized that these two particular situations normally do not involve a purchase transaction, i.e., the buying and selling of merchandise. However, the person or firm importing such merchandise will have an interest in the goods beyond a nominal consignee and, therefore, may be listed as importer of record or may designate a licensed customhouse broker to make entry on their behalf.

m. Informal Entries, I.T.'s and T.E.'s

These "entries" are not subject to the provisions of section 484 of the Tariff Act of 1930, as amended.

n. Friends and Relatives as Agents of Importer.

Any party who qualifies as an importer of record under 19 U.S.C. 1484 has the legal authority to appoint an agent to clear merchandise in his name. This is done in a noncommercial context, that is, the agent is unpaid and the importer who is an individual is not a regular importer and the appointment is for a single shipment. You should recognize that what is occurring is not the transaction of Customs business for which a brokerage license is required. Public Law 97-446 did not modify the rules of agency.

4. Responsibility

It is the responsibility of the district, area, and port directors and their designees to assure that the provisions of this Directive are followed and applied uniformly.

5. Superseded Material

This Directive supersedes Customs Directive 3530-01 dated January 19, 1984.

6. Effective Date

This Directive will be effective upon receipt.

Assistant Commissioner
Office of Commercial Operations

QUESTION : Please list and provide copies of all statutes, regulations, and directives administered by Customs which mention the express consignment or courier industry.

ANSWER:

The following is a list of all directives which mention the express consignment or courier industry:

- Manual Supplement 3673-01(b), Subject: Courier Service Importations, dated December 29, 1980.
- Customs Directive 3670-20, Subject: Accompanied Courier Service Importations, dated May 23, 1985.
- Customs Directive 3200-09, Subject: Customs Cargo Clearance Procedures Applicable to Courier and Overnight Delivery Services, dated June 12, 1985.
- Customs Directive 3500-05, Subject: Informal Entries, dated August 29, 1985.
- Customs Directive 3120-03, Subject: Customs Clearance Procedures Applicable to Courier Services, dated September 5, 1985.

The following is a list of all current Customs Regulations which mention the express consignment or courier industry:

- CR 143.21(1)
- CR 143.29

Also attached is a Notice of Proposed Rulemaking to amend title 19, Chapter I, Code of Federal Regulations by adding a new Part 128, and to amend Part 143 by removing CR 143.21(1) and 143.29. This notice was published in the Federal Register, Vol. 52, No. 241, dated December 16, 1987. The proposed Part 128 would establish procedures for the clearance of cargo carried by express consignment operators or carriers. The final rulemaking is currently in Departmental review.

ORIGINATING OFFICE: CO:R:CV:V

DISTRIBUTION: P-32

POLICIES & PROCEDURES MANUAL

MANUAL SUPPLEMENT

NUMBER: ~~3254-01~~ (b) 3674-01b

ISSUE DATE: December 29, 1980

EXPIRES: Indefinite

SUBJECT: Courier Service Importations

REFERENCES: 19 U.S.C. 1483, 1484, 1485, 1498, 1499, 1624; General Headnote 5, Tariff Schedules of the United States.

1. PURPOSE

To set forth the procedure for clearing articles imported by courier services.

2. BACKGROUND

Courier services offer overnight delivery of articles from abroad. Typically, they import intangibles such as currency and securities, business records, commercial drawings and similar articles of nominal value. Depending upon the value and type of article, entry may be effected by means of a baggage declaration, an informal or formal entry, or a combination thereof. Intangibles are exempt from entry.

Courier services may import their shipments as unaccompanied cargo or as baggage accompanying a courier service employee. This latter type of shipment typically consists of 10-15 duffle bags containing a large number of individually addressed envelopes and parcels. Courier services, in some cases, do not fully and accurately describe articles in their shipments, and sometimes incorrectly claim that articles are free of duty or are intangibles.

Certain customhouse brokers question the legal right of couriers to clear the shipments they import because they are not licensed to transact Customs business on behalf of importers.

On June 19, 1980, we published a notice in the Federal Register inviting comments from the public concerning Customs handling of courier importations. After careful consideration of those comments and the applicable provisions of law and regulation, we reached the following legal conclusions:

A. A courier service, by virtue of possession of baggage, may clear it through Customs by means of a baggage declaration, to the extent authorized by section 148.23(c), Customs Regulations.

Customs Form 232-C (6-2-77)

B. If a courier service qualifies as the consignee under 19 U.S.C. 1483, the courier service may file informal or formal entries in its own name or may, by a power of attorney, authorize a customhouse broker to make entry. One of the types of evidence of the right to make entry listed in section 141.11 (a), Customs Regulations, shall be filed in connection with the entry.

3. ACTION

Entry and clearance of courier service importations will be treated in accordance with these legal principles. A courier service, to assure expeditious clearance, must separate sacks into two groups:

- That merchandise transported as baggage and limited to (1) intangibles, and (2) business records which the courier service proposes to clear via a baggage declaration, pursuant to section 148.23(c) of the regulations.

- All other items. This category will generally not be examined in the passenger clearance area, but will be removed to the cargo area for normal processing as air cargo. Formal or informal entry will normally be required.

If a courier commingles other merchandise with business records and intangibles which he proposes to clear via a baggage declaration, the appropriate Customs officer will refer all the sacks to the cargo processing area to ensure proper processing and adequate protection of the revenue.

District/area directors will prescribe operational safeguards to ensure that couriers are conforming to the above procedures. Where operationally feasible, pouches which may be cleared via a baggage declaration may be processed in passenger processing facilities. When protection of the revenue dictates, the appropriate Customs officer will require a formal or informal entry for articles which a courier intended for clearance on a baggage declaration.

Processing of pouches requiring formal or informal entry will be conducted elsewhere than in the passenger inspection area, with facilities suitable for proper inspection of cargo or mail packages.

Regional commissioners and district/area directors should, based upon local conditions, determine if articles requiring formal or informal entry can be processed outside normal cargo processing duty hours, or if they should be post entered and routed to the cargo area for processing during regular duty hours.

When protection of the revenue so requires, and in cases where a courier service continues to provide insufficient or inaccurate documentation or does not segregate the articles as prescribed above, the appropriate Customs officer will require that all courier pouches be transferred to the cargo area for processing.

In cases of continued violations, the district/area director will take action to impose the sanctions provided for under violation of 19 U.S.C. 1592 and may refer the matter to the Office of Investigations for further investigation.

Unaccompanied courier shipments will be processed in the same way as other cargo shipments.

4. EFFECTIVE DATE

Sixty days from date of issuance.

5. EXPIRATION

This Manual Supplement will expire upon incorporation into P&PM Section 3254.

File: ENT-1-01-CO:R:CV:V
715196 MK

William T. Archey
Acting Commissioner of Customs

ORIGINATING OFFICE: IC:C

DISTRIBUTION: P-36

POLICIES & PROCEDURES MANUAL

CUSTOMS DIRECTIVE

NUMBER: 3670-02

ISSUE DATE: May 23, 1985

SUBJECT: **ACCOMPANIED COURIER SERVICE IMPORTATIONS**

References: 19 U.S.C. 1483, 1484,1485,1498,1499,1624; General Headnote 5, Tariff Schedules of the United States.

1. Purpose

To modify the procedures for processing articles imported by courier services.

2. Background

For the purposes of this directive a courier service is a company responsible for the rapid delivery of numerous packages for various importers though the shipments are consigned to the courier service.

Courier services offer overnight delivery of articles from abroad. Many of these importations are intangibles, which are exempt from entry.

Courier services may import their shipments as cargo or as baggage accompanying a courier service employee or representative. As the volume of the latter procedure grows, shipments accompanying service employees are having an increasing effect on Customs passenger processing operations. Handling of these shipments in the passenger areas usually requires the services of additional courier employees and/or Customhouse brokers. Entry of additional persons into the FIS area increases the potential for breaches of security.

3. Responsibilities

The examination, entry, and release of all courier service importations is to be accomplished in cargo processing facilities.

District/Area Directors are to take steps to ensure the expeditious and secure transfer of these shipments to the cargo area. Where practicable, these goods should be moved directly from the aircraft to the cargo processing area.

If it is necessary to admit additional courier service personnel to the passenger facility to transfer these shipments, this activity should be carefully monitored. The provisions of 4.30(m) of the Customs Regulations concerning employee lists are to be applied to these courier services.

Customs managers should make every effort to provide cargo services for processing of these shipments immediately subsequent to their arrival in the cargo area.

Commercial shipments carried by individuals representing the shipper or importer may be processed in the passenger area, if in the opinion of the Customs officer in charge this will not adversely impact the normal passenger flow.

4. Effective Date

Thirty days from date of issuance.

5. Superseded Material

Manual Supplement 3674-01, dated December 29, 1980.

Commissioner of Customs

*U.S. G.P.O. 1985- 461-148/20059

ORIGINATING OFFICE: IC:C

DISTRIBUTION: D-32

POLICIES & PROCEDURES MANUAL

CUSTOMS DIRECTIVE

NUMBER: 3200-09

ISSUE DATE: June 12, 1985

SUBJECT: Customs Cargo Clearance Procedures Applicable to Courier and Overnight Delivery Services

1. PURPOSE

The purpose of this Directive is to ensure uniform and consistent Customs treatment of courier services and overnight delivery services in accordance with the applicable Customs laws and regulations.

2. BACKGROUND

There has been a substantial and rapid increase in the quantity of shipments carried into the United States by the various courier and overnight delivery services:

1. The courier services usually use passengers traveling by air to bring in sacks of shipments.
2. The overnight delivery services in addition to using couriers often use their own aircraft.

These companies usually began by carrying low risk/low value items such as business papers and are now carrying a wide variety of commercial shipments from an increasing range of foreign countries.

Originally the bulk of the foreign shipments carried by the overnight delivery services came from Canada into various U.S. hub cities. Shipments from other countries were brought in by couriers and then were transported in-bond from the port of arrival to the hub cities for clearance. Recent information indicates that some of the companies are planning to expand their service to a large number of foreign locations. Therefore the ratio between low risk Canadian shipments and higher risk non-Canadian shipments will be changing in the future.

Due to the time sensitive nature of the overnight delivery service operation, Customs officers at hub cities have developed special Customs clearance procedures in order to expedite the movement of the shipments. However, with the expansion of these services and their movement into areas served by traditional commercial air carriers, it is essential that they be required to comply with established operational and regulatory requirements. It is the responsibility of the companies concerned to provide Customs with the required documents and data as early as possible in order that the shipments may be cleared within the desired time periods.

3. ACTION

Customs officers stationed at overnight delivery service hub operations will require the presentation of a formal or informal entry prior to or at the time of the examination of the merchandise in accordance with 19 CFR 141.4. Included with the entry will be an invoice in accordance with 19 CFR 142.6 containing the required information including a seven digit TSUSA number.

The District Director is authorized to examine the packages and quantities of merchandise that he deems necessary for the determination of duties and for compliance with Customs laws and laws enforced by Customs. However, under 19 CFR 151.2(a)(1) minimum quantities for examination are specified unless a special regulation exists which permits the District Director to examine a lesser number. With the implementation of ACS/Selectivity, the Commissioner may specifically designate ports of entry at which the District Director may release cargo without examination (19 CFR 151.2(a)(2)).

Therefore, in order to ensure the rapid processing of shipments imported by overnight delivery services, it is essential for the company and their brokers to present the necessary entry data to Customs as soon as possible. In ACS/Selectivity ports it will be possible to utilize the information provided in an advance manifest together with the entry number, TSUSA number, and importer number in order to screen the shipments prior to their arrival. The CF 3461 or

CF 7501 and rated invoices must be available at the time of the arrival and examination of the shipment. Overnight delivery services may experience some difficulty in obtaining all the necessary data elements for selectivity, but it will be their responsibility to provide the data if they wish Customs to use selectivity in examining the shipments. In the absence of the necessary advance data, all entries will be examined in accordance with normal cargo procedures.

It will be the responsibility of the Regional Commissioner or District/Area Director to determine if informals are screened through ACS/Selectivity or are selectively examined using other criteria. The company will be responsible for delivering the proper package to Customs and opening it for examination.

District Directors also should use selectivity in determining the extent of the examination of the shipments which supposedly do not require entry ("intangibles"). The Customs officers on duty should screen the advance manifest if one is available and designate any suspicious shipments for examination. The inspector should also make a visual examination of these shipments in order to select any suspicious shipment for examination. Periodic "blitz" operations using canine enforcement teams and CET personnel should be conducted in order to assess the enforcement risks.

All duty will be collected. There is no authority in effect for not collecting duty under a specified amount from cargo shipments. The brokers may elect to submit CF 3461's for informal entries.

Service provided to overnight delivery services on a regular and recurring basis outside of the normal working hours of the port will be provided on a reimbursable basis in accordance with the "user-charges statute" 31 USC 9701. The Chief Counsel has issued an opinion which states that Customs may accept reimbursement from a private party for service which solely benefits that private party. The formula for the cost of such service has been established and the CF-6082 will be used to bill the party in interest.

Overnight delivery services should be made aware of the various modules of the automated commercial system in order that they may be prepared to participate in ABI, automated manifest, or other ACS systems in the future. An interface with ACS may be of significant importance to the overnight delivery services in the near future.

4. RESPONSIBILITIES

Regional Commissioners and District Directors will ensure that these standards and operating procedures are applied to all courier and overnight delivery service operating within their areas of responsibility.

5. EFFECTIVE DATE

These procedures should be put into effect as soon as possible since they are essentially a repetition of existing laws and regulations. However, agreements have been previously reached with some of the companies concerned and timely notice should be given to them in cases in which a change in current operating procedures is required. In no case should the time period allowed for implementation of these procedures exceed 3 months.

6. FURTHER INFORMATION

If further explanation of this Directive is required, please contact the Office of Cargo Enforcement and Facilitation at FTS 566-8151.

EHmach
Assistant Commissioner
Office of Inspection and Control

ORIGINATING OFFICE: CO:R:E:E

DISTRIBUTION: P-35

POLICIES & PROCEDURES MANUAL

CUSTOMS DIRECTIVE

NUMBER: 3500-05

ISSUE DATE: August 29, 1985

SUBJECT: Informal Entries

1. PURPOSE

The purpose of this directive is to establish a new policy regarding the right to make informal entries.

2. BACKGROUND

It has been brought to Headquarters attention that a large number of informal entries which are commercial in nature are being filed by parties who are not licensed customhouse brokers, such as travel agents, airline employees, and courier service employees. The recently enacted Tariff and Trade Act of 1984 amended 19 U.S.C. 1641(b)(1) to provide that no person may conduct Customs business (other than solely on behalf of that person) unless that person holds a valid Customs broker's license. The term "Customs business" is now defined in amended section 1641(a)(2) to mean "those activities involving transactions with the Customs Service concerning the entry and admissability of merchandise, its classification and evaluation, the payment of duties, taxes, or other charges assessed or collected by the Customs Service upon merchandise by reason of its importation, or the refund, rebate, or drawback thereof."

3. ACTION

Effective immediately all informal entries of merchandise which are commercial in nature which are not being filed by importers or their employees will not be accepted unless they are filed by licensed customhouse brokers. Informal entries of merchandise which are noncommercial in nature may continue to be handled by unpaid agents.

4. RESPONSIBILITY

It is the responsibility of regional, district, area, and port directors to administer the contents of this Directive.

5. EFFECTIVE DATE

This Directive is effective upon receipt.

Assistant Commissioner
Commerical Operations

CUSTOMS ISSUANCE SYSTEM
DEPARTMENT OF THE TREASURY • UNITED STATES CUSTOMS SERVICE
U.S. G.P.O. 1983-381-[illegible]

beginning in April 1988 for the first five days of the season. Limiting hunter density on these days should help reduce the risk of accidental injury and enhance the hunting experience. Actual quota hunt days will be publicized well in advance of each season. In order to participate in quota turkey hunts, hunters will be required to complete an application form which must be received by established deadlines. A drawing will be conducted by computer and a quota hunt permit or rejection notice mailed to the applicant.

The $2 application fee for LBL quota turkey hunt permits will recover administrative costs associated with processing the forms, conducting the drawing, and notifying applicants of rejection or selection. Applications received after the deadline would not be processed and fees would be returned to the applicants. TVA has determined that this proposed rule will not be a "major" rule under Executive Order No. 12291 and will not have a significant economic impact on a substantial number of "small entities" as defined by the Regulatory Flexibility Act.

TVA has determined in accordance with § 5.2.27 of TVA's procedures implementing the National Environmental Policy Act (48 FR 19264) that the proposed rule is of a type that does not have a significant impact on the human environment. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 18 CFR Part 1310

Government property, Hunting, Land, land sales.

For the reasons set forth in the preamble, TVA proposes to amend Title 18, Chapter XIII of the Code of Federal Regulations as follows:

PART 1310—ADMINISTRATIVE COST RECOVERY

1. The authority citation for 18 CFR Part 1310 continues to read as follows:

Authority. 16 U.S.C. 831-831dd, 31 U.S.C. 9701.

§ 1310.2 [Amended]

2. Section 1310.2 is amended by adding "and turkey hunt" after "deer hunt" where it appears in paragraph (c) in the heading and text.

§ 1310.3 [Amended]

3. Section 1310.3 is amended by adding "and turkey hunt" after "deer hunt" where it appears in paragraph (d) in the heading and text.

W.F. Willis,

General Manager.

[FR Doc. 87-28708 Filed 12-15-87; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 128 and 143

Procedures for Clearance of Cargo Carried by Express Consignment Operators or Carriers

AGENCY: Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs regulations to set forth revised special informal entry procedures applicable to the entry and clearance of cargo carried by the varius entities which comprise the express consignment industry. These regulations would further refine and expand the existing procedures which recognize the special needs of this growing industry. The member countries of the Customs Cooperation Council have recently examined the industry and associated issues and have adopted international guidelines which established various definitions, including the term "Express Consignment Operators or Carriers".

The overwhelming growth of this industry, which is expected to continue, requires Customs to provide more expedited clearance procedures. The proposed amendments would further promote uniform, fair, and consistent treatment of the various courier and express services, while at the same time better assuring the protection of the revenue in accord with all applicable laws and regulations.

DATES: Comments must be received on or before February 16, 1988.

ADDRESSES: Comments (preferably in triplicate) may be submitted to and inspected at the Regulations Control Branch, Customs Service Headquarters, Room 2324, 1301 Constitution Avenue, NW., Washington, DC 20229. Comments relating to the information collection aspects of the proposal should be addressed to Customs, as noted above, and also the Office of Information and Regulatory Affairs, Attention: Desk Officer for U.S. Customs Service, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Operational aspects: Vincent Dantone, Office of Inspection and Control (202 566-5354);

Legal aspects: Jerry Laderberg, Entry Procedures & Penalties Division (202-566-5765).

SUPPLEMENTARY INFORMATION:

Background

All imported merchandise entering th customs territory of the U.S. is subject t procedures relating to entry and clearance. The procedures ensure the proper appraisement, valuation, and tariff classification of the merchandise for the purpose of collecting the lawful amount of duties, as well as compliance with all other laws and regulations administered and enforced by Customs. Different procedures are provided for the entry and clearance of merchandise depending upon its value. There are formal entry procedures set forth in Part 141, Customs Regulations (19 CFR Part 141), with [illegible] applicable to shipments of merchandise valued in excess of $1000, and informal entry procedures set forth in Part 143, Customs Regulations (19 CFR Part 143), for the most part limited to shipments o merchandise valued at $1000 or less.

Although the procedures for the informal entry of merchandise are less cumbersome and comprehensive than those for formal entry, they may still present an impediment to courier and express services.

The trend in [illegible] consignment industry for [illegible] clearance of cargo and the processing of entry documents is well recognized by Customs. Because of the special needs of the growing express consignment industry, by T.D. 86-143, published in the Federal Register of July 22, 1986 (51 FR 26343), informal entry procedures were set forth in §§ 143.21(f) and 143.29, Customs Regulations (19 CFR 143.21(f), 143.29). These procedures have helped the industry and Customs cope with an ever increasing workload. However, Customs recognizes that the procedures could be improved. In reaching this conclusion, Customs has noted that major express consignment companies have averaged over a 400% increase in imported cargo carried during the last 2 years while Customs staffing levels hav remained static as express industry facilities due to manpower constraints. Further, a 150% increase in volume is expected in the coming year. The Customs Cooperation Council recently examined the express consignment industry. It noted the problems raised b on-board and fast parcel services as well as the time-sensitive nature of such consignments. The Council's study, as

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noted in the May 1, 1987 report of its Permanent Technical Committee (Document 34.065), highlighted the need for the Customs service of the Council's member countries to provide a rapid reliable control and clearance system for this type of traffic.

It has now been determined that more detailed and accurate information from the express consignment industry and its participation in the Customs data processing systems is necessary for Customs to streamline its processing. By providing certain advance information on incoming shipments through the automated data processing systems, and full reimbursement for services rendered, Customs would be able to assist the industry in expeditiously processing the workload while maintaining our enforcement posture.

Proposal

To set forth revised special informal entry procedures applicable to the express consignment industry, it is proposed to amend the Customs Regulations in title 19, Code of Federal Regulations (19 CFR Chapter I), by adding a new Part 128, Customs Regulations (19 CFR Part 128). The proposed new Part 128 defines an express consignment operator or carrier and certain other terms. It establishes an approval process for express consignment facilities that, in addition to other requirements, mandates participation in Customs data processing systems for entry and entry release processing. These procedures would be available to all operators, carriers, and other entities that can meet the criteria set out in these regulations.

Two types of installations presently utilized by the express consignment industry would be recognized. The first is a centralized hub facility which is a separate, unique, single purpose facility normally operating outside of Customs operating hours. The facility would have to be approved by the district director for entry filing, examination and release of express consignment shipments. The second is the express consignment carrier facility, which is a separate or shared specialized facility approved by the district director solely for the examination and release of express consignment shipments.

Because of the high volume of entries that the major overnight courier services handle under existing criteria, they could qualify to be designated as a port of entry. As such, Customs inspectional services would be provided at all times at no additional cost to the courier service. All expenses for providing the service would be allocated out of the annual Customs budget appropriations as at other designated ports of entry. Currently, in accordance with the User Charges Statute (31 U.S.C. 9701), the courier services must reimburse Customs for inspectional services occurring at places other than established ports of entry. This user fee statute was enacted to ensure that Federal Governmental services provided to individual recipients, as opposed to the general public, are self-sustaining to the greatest extent possible. The potential establishment of separate ports of entry for individual couriers would, in effect, be contrary to the Congressional intent concerning the user fee statute. Accordingly, by T.D. 87–65, published in the Federal Register of May 4, 1987 (52 FR 16328), the port of entry workload criteria were slightly modified to provide that no more than half of the minimum 2500 consumption entries to be filed at a port of entry can be attributed to one private party, which must generally compensate the Government for service provided under 31 U.S.C. 9701.

The proposed new regulations incorporate the current provisions of §§ 143.21(l) and 143.29, Customs Regulations (19 CFR 143.21(l), 143.29), with the following modifications. They provide for the filing of a written application and a process for Customs approval of exrpess consignment and hub facilities; establish advance manifest requirements; establish bond requirements; generally raise the informal entry ceiling to $1250 for those qualifying to use the procedures; eliminate the distinction between shipments valued at $250 or less and those valued in excess thereof; raise the value level of shipments which must be segregated if an advance manifest is used, from $5.00 to $25.00; streamline informal and formal entry procedures; require that all entry numbers be furnished to Customs in a Customs approved bar coded readable format; and permit the district director to waive production of entry documentation in certain cases. The district director's current authority to require the consolidation of shipments under one entry would also be extended. These amendments would further promote uniform, fair, and consistent treatment of the various courier and express services and make the procedures available to all operators, carriers, and other entities that can meet the criteria, while at the same time better assuring the protection of the revenue in accord with all applicable laws and regulations. Meetings have been held with industry representatives to advise them of the procedural changes and the benefits that will accrue to their industry if the changes are adopted.

The proposed new Part 128 provides for an application processing fee in connection with the facility approval process. It is Customs intent to initially implement a two taired fee system. A $500 fee would apply to the approval of facilities in existence at the time final regulations are published and to facilities which are changed or altered after having been previously approved. This would cover the exprenses of the district director's review of and response to the application, review of the proposed procedures by the port director and higher level Customs officials, as well as appropraite administrative costs. An application fee of $1000 would apply to the approval of a new or expanded facilities. This fee would cover, in addition to the expense noted above, facility design review, including blueprint review for work flow and cargo security purposes; on-site meetings between company and Customs officials to discuss the facility design and the company's operational and procedural proposals. This fee system would be reviewed and revised periodically to reflect changes in processing expenses. Changes in the fee system would be published in the Federal Register and the Customs Bulletin.

Comments

Before adopting these proposed regulations, consideration will be given to any written comments (preferably in triplicate) timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Customs Service Headquarters, Room 2324, 1301 Constitution Avenue, NW., Washington, DC 20229.

E.O. 12291 and Regulatory Flexibility Act

Because the proposed amendments do not meet the criteria for a "major rule" within the meaning of E.O. 12291, a regulatory impact analysis is not necessary. Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments would not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the

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regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Paperwork Reduction Act

The proposed regulations are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Accordingly, the document has been submitted to the Office of Management and Budget for review and comment pursuant to 44 U.S.C. 3504(h). Public comments relating to the information collection aspects of the proposal should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Office for U.S. Customs Service, Office of Management and Budget, Washington, DC 20503. A copy of the comments to the Office of Management and Budget should also be sent to Customs at the address set forth in the ADDRESS portion of this document.

Drafting Information

The principal author of this document was Arnold L. Sarasky, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnal from other offices participated in its development.

List of Subjects

19 CFR Part 128

Carriers, Couriers, Customs duties and inspection, Express consignments, Imports.

19 CFR Part 143

Customs duties and inspection, Imports.

Proposed Amendments to the Regulations

It is proposed to amend title 19, Chapter I, Code of Federal Regulations, by adding a new Part 128, Customs Regulations (19 CFR Part 128), and to amend Part 143, Customs Regulations (19 CFR Part 143), be removing §§ 143.21(1) and 143.28, as set forth below:

PART 128—EXPRESS CONSIGNMENTS

1. The authority citation for Part 128 would read as follows:

Authority: 19 U.S.C. 66, 1202 (Gen. Hdnote. 11), 1484, 1498, 1551, 1555, 1556, 1565, 1624.

2. Chapter I of title 19, Code of Federal Regulations (19 CFR Chapter I) would be amended by adding a new Part 128 to read as follows:

PART 128—EXPRESS CONSIGNMENTS

Subpart A—General

Sec.
128.0 Scope.
128.1 Definitions.

Subpart B—Administration

128.2 Express consignment carrier application and approval process.
128.3 Manifest requirements.
128.4 Bonds.
128.5 Articles not requiring entry.
128.6 Informal entry procedures.
128.7 Formal entry procedures.
128.8 Simplified entry document procedures.

Authority: 19 U.S.C. 66, 1202 (Gen. Hdnote. 11), 1484, 1498, 1551, 1555, 1556, 1565, 1624.

Subpart A—General

§ 128.0 Scope.

This part sets forth requirements and procedures for the clearance of imported merchandise carried by express consignment operators and carriers, including couriers, under special procedures.

§ 128.1 Definitions.

For the purpose of this part:

(a) *Express consignment operator or carrier.* An "Express consignment operator or carrier" is a company operating in any mode or intermodally moving cargo by special express commercial service under closely integrated administrative control. Its services are offered to the public under advertised, guaranteed timely delivery on a door-to-door basis. An express consignment operator assumes liability to Customs for the articles in the same manner as if it is the sole carrier.

(b) *Cargo.* "Cargo" means any and all shipments imported into the customs territory of the United States by an express consignment operator or carrier whether manifested, accompanied, or unaccompanied.

(c) *Courier shipment.* A "courier shipment" is an accompanied express consignment shipment.

(d) *Hub.* A "Hub" is a separate, unique, single purpose facility normally operating outside of Customs operating hours approved by the district director for entry filing, examination, and release of express consignment shipments.

(e) *Express consignment carrier facility.* An "express consignment carrier facility" is a separate or shared specialized facility approved by the district director solely for the examination and release of express consignment shipments.

(f) *Closely integrated administrative control.* The term "closely integrated administrative control" means operations must be sufficiently integrated at both ends of the service (pick-up and delivery) so that the express consignment company can exercise a high degree of control over the shipments, particularly in regard to the reliability of information supplied for Customs purposes. Such control would be implemented by substantial common ownership between the local company and the foreign affiliate and/or by a very close contractual relationship between the local company and its foreign affiliate(s) (*e.g.*, a franchise arrangement).

(g) *Reimbursable.* "Reimbursable" means all costs, including normal and special enforcement operations, incurred at an express consignment operator's hub or an express consignment carrier facility that are required to be reimbursed to the Government.

Subpart B—Administration

§ 128.2 Express consignment carrier application and approval process.

(a) *Facility application.* Requests for approval of an express consignment carrier or hub facility must be in writing to the district director.

(b) *Application contents.* The application for approval of a express consignment carrier or hub facility must include the following:

(1) A full description of the facilities, including blueprints, floor plans and facility location(s).

(2) Statement of the general character of the express consignment operations.

(3) Estimated [illegible] of transactions by:

(i) Formal entries.

(ii) Informal entries.

(iii) Shipments not requiring entry (see § 128.5).

(4) Application processing fee, as set forth in paragraph (e).

(5) List of principal company officials or officers.

(6) Projected start-up date, days and hours of operation.

(7) An agreement that the express consignment company will:

(i) Ensure that all cargo will be processed in the Customs Automated Commercial System (ACS) and associated modules, including, but not limited to Automated Broker Interface (ABI), Automated Manifest System (AMS), Cargo Selectivity, and Statement Processing.

(ii) Sign and implement a narcotics enforcement agreement with Customs.

(iii) Provide without cost to the Government, adequate office space, equipment, furnishings, supplies and security according to Customs specifications.

(iv) Timely pay all reimbursable costs, as determined by the district director.

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(v) Pay to Customs all relocation, training and other costs and expenses incurred by Customs in relocating necessary staff to the company's hub express consignment carrier facility to provide or service to the company and to pay expenses incurred by Customs due to termination or decline of operations at the facility.

(c) *Changes or alternations to facility.* All proposed changes or alternations to an existing facility must be submitted in writing to the district director for approval prior to the implementation thereof and shall contain the information specified in paragraph (b).

(d) *Appeal of denial of application.* Any express consignment operator or carrier denied approval by the district director may file a written appeal with the appropriate regional commissioner within 14 calendar days from the date of denial.

(e) *Application processing fee.* Each operator of an express consignment hub or carrier facility will be charged a fee to establish under the provisions of 31 U.S.C. 9701. The fee will be periodically reviewed and revised to reflect changes in processing expenses and any changes thereto will be published in the Federal Register and Customs Bulletin.

Subpart C—Procedures

§ 128.3 Manifest requirements.

(a) *Additional information.* Express consignment operators and carriers shall provide the following manifest information in advance of the arrival of all shipments in addition to the information and documents otherwise required by the Customs Regulations:

(1) Country or origin of the merchandise.

(2) Shipper name, address and country.

(3) Ultimate consignee name and address.

(4) Specific description of the merchandise with tariff item numbers. All articles for which an entry is not required as noted in § 128.5 shall be separately listed and their entry exemption status noted.

(5) Quantity.

(6) Shipping weight.

(7) Value.

(b) *Sorting of cargo.* If shipments are sorted by country or origin of the merchandise when they arrive at the hub or express consignment facility or are so presented to Customs, the advance manifest information shall also be so listed.

(c) *Explanation of manifest amendments.* Amendments to the manifest to report shortages (merchandise manifested but not found) or overages (merchandise found but not manifested) shall be made on Customs Form 5931 and submitted to Customs within 72 hours of the arrival and entry of the importing conveyance.

§ 128.4 Bonds.

All express consignment operators or carriers shall be recognized by Customs as an international carrier, be approved as a carrier of bonded merchandise and have filed bonds on Customs Form 301, containing the bond conditions set forth in §§ 113.62, 113.63 and 113.64 of this chapter, to insure compliance with Customs requirements related to the importation and entry of merchandise as well as the carriage and custody of merchandise under Customs control.

§ 128.5 Articles not requiring entry.

All articles carried by an express consignment operator or carrier shall be entered except for those specifically exempt from entry by § 321, Tariff Act of 1930, as amended (19 U.S.C. 1321), and General Headnote 5, Tariff Schedules of the United States (19 U.S.C. 1202).

§ 128.6 Informal entry procedures.

(a) *Eligibility.* Informal entry procedures may generally be used for shipments not exceeding $1250 in value which are imported by express consignment operators and carriers. Such procedures, however, may not be used for prohibited or restricted merchandise; merchandise which is subject to a quota or other quantitative restraints, or in any instance in which the district director may require a formal entry under the provisions of § 143.22 of this chapter. In such case, individual shipments for the same consignee valued at $1250 or less may be consolidated on one entry.

(b) *Procedures.* Customs Form 3461, appropriately modified to cover all importations under the special procedures contained in this Part shall be submitted on a yearly basis with the first such form submitted prior to the commencement of hub or express consignment carrier facility operations. The party with the right to file entry may submit a copy of the invoice or the advance manifest, as described in § 128.3 in lieu of other control documents.

(c) *Alternative procedure.* The party with the right to file entry may be required to submit an individual Customs Form 3461 covering the eligible shipments on a daily basis or by flight basis. Commercial invoices or advance manifests shall be attached to the Customs Form 3461 which shall contain the entry number and other necessary information. A notation shall be plac on the Customs Form 3461 that the en covers multiple shipments.

(d) *Low value shipments.* Shipment valued at $25 or less must be segregat from those valued at more than $25 if advance manifest is used as the entry document.

(e) *Entry summary.* An entry summ (Customs Form 7501) must be present in proper form, and estimated duties deposited, within 10 days of release o the merchandise under either the regu or alternative procedure described in this section.

§ 128.7 Formal entry procedures.

The district director may require a formal entry for an individual shipme or may require the consolidation of shipments under one such entry in accordance with Customs policies, procedures and automated processin capabilities, or in accordance with th provisions of § 143.22 of this chapter. such case, individual shipments for t same consignee valued at $1250 or le may be consolidated on one entry.

§ 128.8 Simplified entry document procedures.

(a) *Entry number.* All entry numbe must be funished to Customs in a Customs approved bar coded readab format.

(b) *Entry documentation waiver.* T district director may, at the time of entry, waive preparation of entry documentation for those entries designated as not requiring examination or review if the advanc manifest requirements of § 128.3(a) o this chapter have been met.

PART 143—CONSUMPTION, APPRAISEMENT, AND INFORMAL ENTRIES

1. The authority citation for Part 14 would continue to read as follows:

Authority: 19 U.S.C. 66, 1481, 1484, 149 1624.

§ 143.21 [Amended]

2. Section 143.21 would be amende by removing paragraph (l).

§ 143.20 [Removed]

3. Part 143 would be amended by removing § 143.20.

Commissioner of Customs

William von Raab.

Approved: November 10, 1987.

Francis A. Keating, II,

Assistant Secretary of the Treasury.

[FR Doc. 87-28880 Filed 12-15-87; 8:45 ar

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[illegible]

CUSTOMS DIRECTIVE

NUMBER: 3120-03

ISSUE DATE: September 5, 1985

SUBJECT: Customs Clearance Procedures Applicable to Courier Services

References: 19 U.S.C. 1483, 1484, 1485, 1498, 1499, 1624; General Headnote 5, Tariff Schedules of the United States; Directive 3670-02 (May 23, 1985), and clarifying memo to Regional Commissioners dated July 2, 1985; Manual Supplement 3674-01 December 29, 1980).

1. PURPOSE

To clarify and modify procedures for processing intangibles (business records and securities under General Headnote 5) and articles imported as baggage by air courier services.

2. BACKGROUND

For the purpose of this directive, a courier service is a company which, by itself or in concert with affiliates or subcontractors, provides a very rapid, door-to-door transportation service for time-sensitive intangibles (business records and securities under General Headnote 5), other articles specifically exempted from entry, and/or tangible articles. Courier services generally affect air transportation of packages as baggage of courier employees travelling as passengers on board regular commercial airlines. Some courier services also make use of expedited cargo services of regular commercial airlines or specialized cargo airlines. Unlike traditional freight services, courier service is generally initiated by the shipper, not the addressee, and the addressee may not be expecting the arrival of a given shipment.

While courier services vary, the operations of a typical courier service may be described as follows. Most international couriers today limit their service to packages weighing 70 pounds or less. They generally provide the shipper a single, simplified air waybill that provides individual documentation for the transmission of each package carried from shipper to destination. On a given flight, an onboard courier passenger will transport as baggage anywhere from 1 to 20 or more bags or sacks, containing the packages of up to several hundred individual shippers. Most courier shipments are intangibles, which are exempt from entry. Many courier shipments, however, are tangibles and many of these are dutiable (for example, samples, spare parts, advertising

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materials, etc.). Typically, courier services offer overnight service from Europe and South America to the United States and two to three-day service from the rest of the world. The rapid clearance of courier shipments has become very important to the international commerce of the United States.

Since Customs' last review of courier services, Manual Supplement 3674-01 (December 29, 1980), courier services have grown very substantially and become a major element in the communications systems of modern international businesses. In Directive 3670-02 (May 23, 1985), Customs responded to this growth in traffic. Subsequent discussions with the courier industry, however, have indicated the need for further revisions to better accommodate the needs of both the industry and Customs. This directive replaces both prior directives.

The growth in the volume of courier shipments transported as baggage is having an increasing effect on Customs passenger processing operations at major international airports. Two problems have arisen. First, the introduction of courier baggage has contributed to the existing congestion in passenger processing areas of passenger terminals. Second, handling of these shipments in the passenger areas may involve the introduction of additional courier employees and/or Customhouse brokers in the security (FIS) areas. This practice increases the potential for breaches of security.

3. RESPONSIBILITIES

A. In order to assure expeditious clearance of courier baggage, a courier service must separate courier baggage into two separate types of sacks or bags:

(i) INTANGIBLES, such as business records and securities, which qualify under General Headnote 5, and any articles specifically exempted by law or regulations from the requirement for entry.

(ii) TANGIBLES, which shall include all articles not included in the intangibles category.

Sacks or bags containing INTANGIBLES shall not contain any tangibles. INTANGIBLES bags shall be marked by the courier service with prominent green tags or tape carrying the word "INTANGIBLES" prominently. Sacks containing TANGIBLES may contain intangibles. They shall be marked by the courier service with prominent red tags or tape carrying the word "TANGIBLES" prominently. Any bag not so marked will be presumed by Customs to contain tangibles.

B. In cases where a courier service continues to provide insufficient or inaccurate documentation or does not segregate the articles as prescribed above, the appropriate Customs officer will require that all of that courier's pouches be transferred to the cargo area for processing. In cases of repeated violations, the District/Area Director will take action to impose the sanctions provided for under 19 U.S.C. 1592 and may refer the matter to the Office of Investigations for further investigation.

C. There should be no significant delay in the processing of the INTANGIBLES bags of courier passengers compared to processing of other passengers' bags at the passenger processing facilities. INTANGIBLES bags may be inspected at a designated area in the passenger terminal outside of the normal passenger processing flow. In such cases, there is to be no significant loss of security control.

D. Generally, entry and inspection of TANGIBLES bags shall be accomplished in the cargo processing area. If facilities are available, entry of TANGIBLES bags may, at the discretion of the District/Area Director, be accomplished at a designated area in the passenger terminal outside of the normal passenger processing flow. In any case, procedures shall be such that there is no significant loss of security control.

E. Where the District/Area Director determines that courier services contribute significantly to chronic congestion in the passenger processing facilities at a major international airport and no alternative area in the passenger terminal is available, then the courier may be directed to tender INTANGIBLES bags for inspection at a facility developed or designated by the couriers, if any, or otherwise at the cargo processing facility. The entry and clearance of TANGIBLES bags may also take place at such alternative facility. Before requiring the use of such a facility the District/Area Director shall consult with the couriers, airport officials, and other parties necessary to the operation of such a facility and take into account the practical problems that would be involved in its operation. To the extent possible, Customs officials shall work with the couriers, airport officials, and other necessary parties to overcome these practical problems in order to avoid introducing significant delays in the processing of INTANGIBLES bags.

F. Regardless of the site of inspection and/or clearance, Customs managers should make every effort to process courier services' bags as quickly as possible.

G. The admission of additional courier service personnel into the passenger facility should be carefully monitored. The provisions of 4.30(m) of the Customs Regulations concerning employee lists are to be applied to these courier service personnel.

5. **EFFECTIVE DATE**

Thirty days from issuance.

6. **SUPERSEDED MATERIAL**

Customs Directive 3670-02, dated May 23, 1985.

Alfred R De Angelis
Deputy Commissioner

Subpart C—Informal Entry

§ 143.21 Merchandise eligible for informal entry.

The following types of merchandise are among those which may be entered under informal entry (see §§ 141.52 and 143.22 of this chapter):

(a) Shipments of merchandise not exceeding $1,000 in value (except for articles valued in excess of $250 classified in Schedule 3; Parts 1, 4A, 7B, 12A, 12D and 13B of Schedule 7; items 772.30 and 772.35; and Parts 2 and 3 of the Appendix of the Tariff Schedules of the United States Annotated);

(b) Any installment, not exceeding $1,000 in value, of a shipment arriving at different times, as described in § 141.82 of this chapter;

(c) A portion of one consignment, when such portion does not exceed $1,000 in value and may be entered separately pursuant to § 141.51 of this chapter. This paragraph does not apply to shipments of articles valued in excess of $250 classified in items from Schedule 3; Parts 1, 4A, 7B, 12A, 12D, and 13B of Schedule 7; items 772.30 and [illegible]; and Parts 2 and 3 of [illegible] Tariff Schedules of the [illegible] Annotated;

(d) Household or personal effects or tools of trade entitled to free entry under Schedule 8, Part 2A, Tariff Schedules of the United States (19 U.S.C. 1202);

(e) Household effects used abroad and personal effects whether or not entitled to free entry, not imported in pursuance of a purchase or agreement for purchase and not intended for sale;

(f) Household and personal effects described in paragraph (e) of this section [illegible] under [illegible], Tariff Schedules of the United States (19 U.S.C. [illegible]), and the value of the repairs [illegible] does not exceed $1,000;

(g) Personal effects not exceeding $1,000 in value of citizens of the United States who have died abroad;

(h) Books and other articles classifiable under item 270.25, 273.10, 273.35, 765.03, 850.10, or 851.10, Tariff Schedules of the United States (19 U.S.C. 1202), imported by a library or other institution described in item 850.10 or 851.10, Tariff Schedules of the United States (19 U.S.C. 1202);

(i) Theatrical scenery, properties, and effects, motion-picture films, commercial travelers' samples and professional books, implements, instruments, and tools of trade, occupation, or employment, as set forth in § 10.68 of this chapter;

(j) Merchandise which, upon written application to the Commissioner of Customs, is determined to be so unique in character or design that the value thereof cannot be declared and which is not intended for sale or imported in pursuance of a purchase or agreement for purchase; and

(k) Products of the United States, when the aggregate value of the shipment does not exceed $10,000 and the products are imported—

(1) For the purposes of repair or alteration prior to reexportation, or

(2) After having been either rejected or returned by the foreign purchaser to the United States for credit.

(l) Cargo transported by courier and air express services not exceeding $1,000 in value, with the exception of prohibited and restricted merchandise, [illegible]titative restraints, or in any instance in which the district director may require formal entry under § 143.22 of this part. (See § 143.29 of this part).

[T.D. 73-175, 38 FR 17463, July 2, 1973, as amended by T.D. 75-241, 40 FR 44542, Sept. 29, 1975; T.D. 76-145, 41 FR 21444, May 26, 1976; T.D. 82-116, 47 FR 27262, June 24, 1982; T.D. 83-62, 48 FR 14597, Apr. 5, 1983; T.D. 83-82, 48 FR 16881, Apr. 20, 1983; T.D. 84-171, 49 FR 31253, Aug. 3, 1984; T.D. 85-38, 50 FR 8723, Mar. 5, 1985; T.D. 85-123, 50 FR 29955, July 23, 1985; T.D. 86-143, 51 FR [illegible], July 22, 1986]

§ 143.22 Formal entry may be required.

The district director may require a formal consumption or appraisement entry for any merchandise if deemed necessary for: (a) Import admissibility enforcement purposes, (b) revenue protection, or (c) the efficient conduct of Customs business. Individual shipments for the same consignee, when such shipments are valued at $1,000 or less, may be consolidated on one such entry.

[T.D. 73-175, 38 FR 17463, July 2, 1973, as amended by T.D. 84-171, 49 FR 31252, Aug. 6, 1984; T.D. 85-38, 50 FR 9733, Mar. 8, 1985; T.D. 86-120, 50 FR 29953, July 23, 1985]

§ 143.23 Form of entry.

Except for the types of merchandise listed below which may be entered on the forms indicated, merchandise to be entered informally shall be entered on a Customs Form 5119-A, or, if authorized by the district director, upon the presentation of a commercial invoice which contains the following declaration, signed by the importer or his agent:

> I declare that the information on this invoice is accurate to the best of my knowledge and belief; that the invoice quantities are true and correct invoice quantities; and that I have not received and do not know of any invoice other than this one.

(a) Articles in passengers' baggage which may be cleared on a baggage declaration in accordance with Subpart B of Part 148 of this chapter;

(b) Products of the United States being returned for which clearance on Customs Form 3311 is prescribed by § 10.1 of this chapter;

(c) Personal effects and tools of trade for which clearance on Customs Form 3299 is prescribed by § 148.6 of this chapter; and

(d) Shipments not exceeding $1,000 in value (except for articles valued in excess of $250 classified in Schedule 3; Parts 1, 4A, 7B, 12A, 12D, and 13B of Schedule 7; Items 772.30 and 772.35; and Parts 2 and 3 of the Appendix of the Tariff Schedules of the United States Annotated) which are either (1) unconditionally free of duty and not subject to any quota or internal revenue tax, or (2) conditionally free (other than shipments of merchandise provided for in paragraph (g) of this section) and all conditions for free entry are met at the time of entry, which may be released upon the filing by the importer on Customs Form 7523, in duplicate, supported by evidence of the right to make entry.

(e) Merchandise for which informal entry can be made on a different form as prescribed elsewhere in this chapter.

(f) Merchandise released under the immediate delivery procedure or the entry documentation required by § 142.3(a), and entry is made on Customs Form 7501, annotated "Informal Entry" in the upper right hand corner.

(g) Merchandise, regardless of value, which is imported for noncommercial purposes, which qualifies for entry free of duty under the Generalized System of Preferences (see §§ 10.171–10.178 of this chapter), and for which informal entry may be made on Customs Form 7523, in duplicate.

(h) Products of the United States being returned for which informal entry is permitted by § 143.21(j) may be cleared as follows:

(1) For products of the United States returned for the purposes of repair or alteration prior to reexportation, Customs Form 3311 will serve as informal entry.

(2) For products of the United States after having been either rejected or returned by the foreign purchaser for credit, Customs Form 7501, annotated "informal entry" in the upper right hand corner, and Customs Form 3311 will serve as informal entry.

[T.D. 73-175, 38 FR 17463, July 2, 1973, as amended by T.D. 78-100, 43 FR 19813, May 7, 1978; T.D. 79-221, 44 FR 46827, Aug. 9, 1979; T.D. 80-1, 45 FR 1012, Jan. 4, 1980; T.D. 83-82, 48 FR 14997, Apr. 6, 1983; T.D. 85-123, 50 FR 29953, July 23, 1985]

§ 143.24 Preparation of Customs Form 7501 and Customs Form 5119-A.

Customs Form 7501 may be prepared by importers or their agents or by Customs officers. When it can be presented to a Customs cashier for payment of duties and taxes and for numbering of the entry before the merchandise is examined by a Customs officer. Where there is no Customs cashier, Customs Form 5119-A must be used, and it shall be prepared by a Customs officer unless the form can be prepared under his control by the importer or agent for immediate use in clearing merchandise under the informal entry procedure. The conditions for the preparation of Customs Form 7501 by importers or their agents, as described in the first sentence of this section, do not apply to the acceptance of these entries for shipments not exceeding $250 in value released under a special permit for immediate delivery in accordance with Part 142 of this chapter.

[T.D. 84-129, 49 FR 23166, June 5, 1984]

§ 143.25 Information on entry form.

Each Customs Form 5119-A or, where used, Customs Form 7501 shall contain an adequate description of the merchandise and the item number of the Tariff Schedules of the United States (19 U.S.C. 1202), under which the merchandise is classified.

[T.D. 76-213, 41 FR 31812, July 30, 1976]

§ 143.26 [Reserved]

§ 143.27 Invoices.

In the case of merchandise imported pursuant to a purchase or agreement to purchase, or intended for sale and entered informally, the importer shall produce the commercial invoice covering the transaction or, in the absence thereof, an itemized statement of value.

[T.D. 85-39, 50 FR 9612, Mar. 11, 1985]

§ 143.28 Deposit of duties and release of merchandise.

The estimated duties and taxes, if any, shall be deposited at the time the entry is presented and accepted by a Customs officer, whether at the customhouse or elsewhere. If upon examination of the merchandise further duties or taxes are found due, they shall be deposited before release of the merchandise by Customs. When the entry is presented elsewhere than where the merchandise is to be examined, the permit copy shall be delivered through proper channels to the Customs officer who will examine the merchandise.

§ 143.29 Special informal entry procedures for cargo imported by courier and express air services.

This procedure is available for accompanied or [illegible] shipments not exceeding $1,000 in value imported by courier and express air services, with the exception of prohibited and restricted merchandise, merchandise subject to quota or quantitative restraints, or in any instance in which the district director may require formal entry under § 143.21 of t part.

(a) *Shipments valued at $250 or l* To obtain expedited clearance un this section, the party with the ri to file entry shall submit a copy of t invoice or advance manifest contain necessary information including na and address of the shipper, name a address of the consignee, value of t merchandise, country of origin of t merchandise, and description of t merchandise. The commercial invo or advance manifest will be accep by Customs in lieu of a Customs Fo 3461 (Application for Special Per for Immediate Delivery), or Custo Forms 7501 or 5119 (Informal Entr as the entry control document.

(b) *Shipments valued in excess $250 and not exceeding $1,000.* In ad tion to the information required the documentation specified in pa graph (a) of this section, the approp ate item number from the Ta Schedules of the United States (TSU 19 U.S.C. 1202), must be furnished classification purposes.

(c) If an advance manifest is used the entry document, shipments valu in excess of $5.00 must be segregat from those valued at $5.00 or less.

(d) Within 10 days of the filing the entry, the Entry Summary (Cu toms Form 7501) must be provided proper form, with estimated duties a tached.

(e) An Application for Speci Permit for Immediate Delivery (Cu toms Form 3461), appropriately mo fied to cover all importations und the special procedures provided in th section for a period of 1 year, shall submitted to the district direct before the procedure permitted by th section shall be commenced by t courier or air express service.

(f) *Centralized courier facilities.* airports with high volumes of accom panied courier traffic at a central f cility with numerous couriers a their brokers, the district director ma require an individual Application f Special Permit for Immediate Delive (Customs Form 3461), from the br kers representing each courier a covering the various eligible shipment per day or per flight. The commerci invoices or advance manifests will b

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F. Antidumping and Countervailing Duties

Q: What monitoring and reporting systems are in place (or in the planning stages) by which the Department of Commerce and the Customs Service can regularly keep track of: the volume and value of entries whose liquidation has been suspended specifically pursuant to an antidumping or countervailing duty order; the bonds submitted to Customs; cash deposits of estimated antidumping and countervailing duties posted; and, antidumping and countervailing duties finally assessed?

A: The Customs Service currently has what is known as the Blue-Line Report to track the value of antidumping and countervailing duty (AD/CVD) entries. This report, which is a manual system, was developed in conjunction with the Import Administration of the Department of Commerce. It captures the following information for entries filed on or after an AD/CVD order:

Entry Number
Entry date
Port of entry
Commerce case number
Value of shipment
AD/CVD duty depost

At the time of liquidation, any change in the amount of AD/CVD duty originally deposited is reported.

The Blue Line Report does not capture data concerning entries filed prior to the date of an order. Thus, we have no report of the AD/CVD entries filed in the 4 - 6 month period between the date of an affirmative preliminary determination and the date of an order. Liquidation is suspended on these entries, and a bond is posted for the AD/CVD duty, but these entries will only be reported if eventually liquidated with an assessment of AD/CVD duties.

Because of the manual nature of the system, and the exact format required for keying the data into a computer system, significant underreporting of entries actually held for AD/CVD cases has occurred.

Customs is planning to implement an automated AD/CVD module as part of its Automated Commercial System (ACS) in November 1988 for AD/CVD entry summary verification. A byproduct of this module will be the compilation of complete data for all entries on which liquidation is suspended due to an AD/CVD determination. In addition to compiling present Blue Line Report data in an automated mode, this module will capture those entries filed on or after the affirmative preliminary determination, but prior to the order, for which AD/CVD bonds are posted. The module will greatly improve both the accuracy and timeliness of the Blue-Line Report.

The present manual system will be continue for the capture of changes in AD/CVD duties at time of liquidation. Discussions have been held of capturing this data electronically, but timetables for implementation have not been set.

Q: What procedures do the Department of Commerce and the Customs Service have in place (or under consideration) for the detection of fraudulent attempts to circumvent antidumping and countervailing duty orders? Specifically, how do the Department of Commerce and the Customs Service coordinate enforcement of the antidumping and countervailing duty laws?

A: Allegations of misclassifications of merchandise, transshipments, or other fraudulent activity to evade the payment of AD/CVD duties is usually brought to Customs' attention either by a Customs officer reviewing a suspect entry or by domestic industry analysing import data and providing their findings either directly to Customs or to Commerce which then relays it to Customs. These allegations are investigated by the Customs Service's Office of Enforcement. The Commercial Fraud Investigations Center (CFIC) within the Office of Enforcement, jointly staffed with Enforcement and Commercial Operations personnel, is responsible for coordinating investigations with Customs field and overseas offices. Once an investigation is initiated, appropriate coordination is maintained with the Department of Commerce. If Customs determines that entries were falsely filed, liquidation will be suspended and AD/CVD duties assessed. The importer may also be subject to civil penalties under 19 USC 1592 and criminal penalties under 18 USC 542.

Present planning is for the CFIC to take a more proactive role in AD/CVD fraud detection. Analyst positions have been allocated to the CFIC for FY 1990. These positions will be used for AD/CVD trend analysis so that possible transshipment and other evasion activity can be detected earlier and rapid remedial action taken. Although funding will not be available until FY 1990, work in this area, hopefully, will begin in the fall of 1988.

Coordination with the Department of Commerce on AD/CVD enforcement is primarily in the areas of determining TSUSA numbers applicable to scope determinations and disseminating instructions to Customs field officers.

Q: Is there a need for statutory language in order to clarify the two agencies' respective responsibilities and authority?

A: We are of the opinion that no additional statutory language is needed in order to clarify the two agencies' respective responsibilities and authority.

Q. Explain the Blue Line System and how the new module will work.

A. The current "Blue Line" system is largely manual and consists of import specialists physically underlining, in blue ink, the entry number, entry date, port of entry, Commerce case number, shipment value, and AD/CVD duty on extra copies of the CF 7501 form.

The underlined copies are forward to Customs Headquarters by field offices, where they are reviewed. The data is then keyed, and a tape is cut. A printed report is extracted by the computer, and forwarded to the Department of Commerce Import Administration. At time of liquidation, any AD/CVD duty amount changes are reported in the same manner.

With the advent of the new Anti-dumping/Countervailing Duty module of ACS, all data required by Commerce other than changed AD/CVD duty amounts at liquidation, will be available on-line in ACS. Entries submitted after implementation of the module will have this information readily available.

In addition to the above data elements, Customs will be able to provide specific tariff numbers for a case, bonded duty amounts, responsible surety companies and applicable deposit rates. Because of built-in system checks, the information captured will be much more accurate than what is currently available.

The ACS information will be available on-line to Import Administration, and we are working to provide them with periodic data tapes so that they may extract the needed "Blue Line" data in a format convenient to them.

Changes at liquidation will, at this time, continue to be handled in the manual format until such time as we can fully develop and implement line item liquidation.

SOURCE: U.S. Customs Service

II. U.S. Customs Service Data and Statistics (by Port)

A. Value of Entries

AVERAGE VALUE OF ENT. BY PORT FOR FY87
NORTHEAST REGION

PORT	ENTRY COUNT	TOTAL VALUE	AVERAGE/ENTRY
0100	1	$2,280	$2,280.00
PORTLAND, ME	37,377	$1,206,744,890	$32,285.76
BANGOR, ME	640	$491,804,345	$768,444.29
EASTPORT, ME	798	$11,569,328	$14,497.90
JACKMAN, ME	12,241	$136,813,118	$11,176.63
VANCEBORO, ME	1,493	$40,750,843	$27,294.60
HOULTON, ME	26,080	$545,223,559	$20,905.81
FORT FAIRFIELD, ME	678	$3,706,693	$5,458.25
VAN BUREN, ME	2,120	$33,152,653	$15,638.04
MADAWASKA, ME	1,964	$99,708,844	$50,768.25
FORT KENT, ME	609	$8,935,801	$14,672.91
BATH, ME	1	$185,000	$185,090.00
BAR HARBOR, ME	3,132	$59,702,798	$19,062.26
CALAIS, ME	25,374	$461,812,271	$18,200.22
LIMESTONE, ME	135	$793,571	$5,878.30
ROCKLAND, ME	10	$398,550	$39,855.00
JONESPORT, ME	1	$7,154	$7,154.00
BRIDGEWATER, ME	379	$2,503,428	$6,605.35
PORTSMOUTH, NH	997	$189,368,483	$189,938.30
BELFAST, ME	24	$30,861,498	$1286,729.08
SEARSPORT, ME	29	$30,878,388	$1064,772.00
ST. ALBANS, VT	75,890	$1,661,623,154	$21,895.15
RICHFORD, VT	1,845	$8,290,372	$4,493.43
BEECHER FALLS, VT	3,331	$25,364,441	$7,614.66
BURLINGTON, VT	1,060	$145,564,208	$137,324.72
DERBY LINE, VT	32,180	$360,926,003	$11,215.83

AVERAGE VALUE OF EN. [illegible] BY PORT FOR FY87
NORTHEAST REGION

PORT	ENTRY COUNT	TOTAL VALUE	AVERAGE/ENTRY
NORTON, VT	14,901	$172,427,312	$11,571.53
HIGHGATE SPRINGS/ALBURG	40,167	$1,097,106,481	$27,313.63
BOSTON, MA	136,309	$8,805,718,224	$64,601.15
SPRINGFIELD, MA	1,407	$93,985,653	$66,798.62
WORCESTER,MA	416	$6,928,039	$16,653.94
GLOUCESTER, MA	1,261	$193,989,646	$153,837.94
NEW BEDFORD, MA	1,605	$81,044,163	$50,494.81
PLYMOUTH, MA	13	$15,283,962	$1175,689.38
FALL RIVER, MA	25	$16,344,173	$653,766.92
SALEM, MA	26	$27,991,312	$1076,588.92
PROVINCETOWN, MA	1	$10,891	$10,891.00
BRIDGEPORT,CONNECTICUT	2,569	$230,997,096	$89,917.13
HARTFORD. CONNECTICUT	4,955	$131,325,786	$26,503.69
NEW HAVEN,CONNECTICUT	1,502	$394,354,279	$262,552.78
NEW LONDON, CONNECTICUT	149	$39,300,906	$263,764.47
LAWRENCE, MA	129	$2,500,126	$19,380.82
LOGAN AIRPORT, MA	68,947	$2,300,500,981	$33,366.22
NEWPORT, RI	13	$2,584,026	$198,771.23
PROVIDENCE, RI	7,271	$1,648,784,175	$226,761.68
MELLVILLE, RI	8	$616,699	$77,087.38
BRIDGEPORT, CT	1,170	$96,332,319	$82,335.32
HARTFORD, CT	2,542	$108,400,321	$42,643.71
NEW HAVEN, CT	562	$89,585,111	$159,404.11
NEW LONDON, CT	42	$7,103,600	$169,133.33
OGDENSBURG, NY	9,343	$115,959,433	$12,411.37
MASSENA, NY	11,254	$133,258,501	$11,840.99

AVERAGE VALUE OF EN[illegible] BY PORT FOR FY87
NORTHEAST REGION

PORT	ENTRY COUNT	TOTAL VALUE	AVERAGE/ENTRY
FORT COVINGTON, NY	120	$6,095,043	$50,792.03
CAPE VINCENT, NY	13	$120,688	$9,283.69
ALEXANDRIA BAY, NY	60,516	$1,579,222,129	$26,095.94
CHATEAUGAY. NY	3	$9,016	$3,005.33
CHAMPLAIN-ROUSES POINT	305,886	$6,339,832,193	$20,726.13
CLAYTON, NY	3	$52,062	$17,354.00
TROUT RIVER, NY	14,727	$617,999,801	$41,963.73
BUFFALO-NIAGARA FALLS NY	715,914	$16,181,707,506	$22,602.87
ROCHESTER, NY	10,452	$599,443,391	$57,352.03
OSWEGO, NY	426	$239,128,978	$561,335.63
SODUS POINT, NY	4	$2,111,796	$527,949.00
SYRACUSE, NY	5,058	$160,897,909	$31,810.58
UTICA, NY	73	$2,624,304	$35,949.37
PHILADELPHIA, PA	122,449	$10,476,559,271	$85,558.55
CHESTER, PA	722	$2,188,341,974	$3030,944.56
WILMINGTON, DE	9,813	$2,455,845,667	$250,264.51
PITTSBURGH,PA	9,319	$439,584,941	$47,170.83
PAULSBORO	3	$158,314	$52,771.33
WILKES-BARRE/SCRANTON PA	1,057	$29,324,940	$27,743.56
CAMDEN, NEW JERSEY	56	$3,294,010	$58,821.61
HARRISBURG, PA	3,518	$288,419,576	$81,983.96
GLOUCESTER CITY	5	$170,201	$34,040.20
MARCUS HOOK	1	$4,421	$4,421.00
ALLENTOWN, PENNSYLVANIA	1,706	$111,216,386	$65,191.32
ALLENTOWN-BETHLEHEM	45	$1,651,682	$36,794.04
ANNAPOLIS, MD	59	$17,283,328	$292,537.76

AVERAGE VALUE OF EN[illegible] BY PORT FOR FY87
NORTHEAST REGION

PORT	ENTRY COUNT	TOTAL VALUE	AVERAGE/ENTRY
CAMBRIDGE, MD	10	$6,047,981	$604,798.10
BALTIMORE, MD	113,910	$12,716,456,732	$111,636.00
CRISFIELD	6	$59,820	$9,970.00
REGION TOTAL	1,910,850	$75,832,802,948	$39,685.38

AVERAGE VALUE OF ENTRIE PORT FOR FY87
NEW YORK REGION

PORT	ENTRY COUNT	TOTAL VALUE	AVERAGE/ENTRY
NEW YORK, NY	104,885	$10,993,372,423	$104,813.58
ALBANY, NY	1,744	$630,859,913	$361,731.60
1010	1	$335,984	$335,984.00
NEWARK, NJ	532,305	$36,525,999,270	$68,618.55
PERTH AMBOY, NJ	1,154	$1,071,877,253	$928,836.44
JOHN F KENNEDY AIRPORT	727,113	$25,788,206,504	$35,466.57
REGION TOTAL	1,367,202	$75,010,651,267	$54,864.35

AVERAGE VALUE OF EH1 , BY PORT FOR FY87
NORTH CENTRAL REGION

PORT	ENTRY COUNT	TOTAL VALUE	AVERAGE/ENTRY
RAYMOND, MT	4,886	$40,991,751	$8,389.63
EASTPORT, ID	11,291	$1,320,439,365	$116,946.18
SALT LAKE CITY UT	6,418	$153,872,237	$23,975.11
GREAT FALLS,MT	1,740	$525,985,877	$302,290.73
BUTTE, MT	67	$2,709,264	$40,436.78
TURNER, MT	178	$2,587,159	$14,534.60
DENVER, CO	24,496	$947,348,516	$38,673.60
PORTHILL, ID	959	$9,910,095	$10,333.78
SCOBY,MT	52	$411,104	$7,905.85
SWEETGRASS, MT	38,192	$550,212,694	$14,406.49
WHITETAIL, MT	11	$27,991	$2,544.64
PIEGAN, MT	428	$1,820,901	$4,254.44
OPHEIM, MT	103	$782,535	$7,597.43
ROOSVILLE, MT	4,082	$79,584,808	$19,496.52
MORGAN,MT	470	$2,320,973	$4,938.24
WHITLASH, MT	99	$8,428,335	$85,134.70
DEL BONITA, MT	2,323	$12,741,306	$5,484.85
PEMBINA, ND	35,501	$1,213,051,335	$34,169.50
NOYES, MN	8,022	$565,299,387	$70,468.63
PORTAL, ND	18,508	$895,131,036	$48,364.55
NECHE, ND	1,250	$10,868,205	$8,694.56
ST JOHN, ND	200	$1,997,669	$9,988.35
NORTHGATE, ND	561	$51,670,643	$92,104.53
WALHALLA, ND	704	$7,930,202	$11,264.49
HANNAH, ND	79	$1,333,376	$16,878.18
SARLES, ND	205	$1,840,829	$8,979.65

AVERAGE VALUE OF EN. , BY PORT FOR FY87
NORTH CENTRAL REG.UN

PORT	ENTRY COUNT	TOTAL VALUE	AVERAGE/ENTRY
AMBROSE, ND	28	$587,421	$20,979.32
FARGO, NORTH DAKOTA	6	$272,387	$45,397.83
ANTLER, ND	80	$698,727	$8,734.09
SHERWOOD, ND	81	$857,336	$10,584.40
HANSBORO, ND	124	$1,086,063	$8,758.57
MAIDA, ND	321	$5,947,492	$18,528.01
FORTUNA, ND	680	$5,811,466	$8,546.27
WESTHOPE, ND	197	$2,645,602	$13,429.45
NOONAN, ND	195	$1,559,938	$7,999.68
CARBURY, ND	146	$959,901	$6,574.66
DUNSEITH, ND	1,123	$23,182,836	$20,643.67
WARROAD, ND	1,096	$32,635,932	$29,777.31
BAUDETTE, MN	53	$335,853	$6,336.85
PINECREEK, MN	198	$3,466,634	$17,508 25
ROSEAU, MN	2,204	$47,598,966	$21,596.63
MINNEAPOLIS-ST. PAUL, MN	38,183	$1,420,877,371	$37,212.30
DULUTH, MN	1,150	$1,025,996,462	$892,170.84
ASHLAND, WI	6	$306,799	$51,133.17
INTERNATIONAL FALLS, MN	32,136	$1,683,620,639	$52,390.49
SUPERIOR, WI	250	$116,456,974	$465,827.90
GRAND PORTAGE, MN	3,426	$149,557,043	$43,653.54
MILWAUKEE, WI	17,996	$672,905,123	$37,391.93
MARINETTE, WI	6	$495,087	$82,514.50
GREEN BAY, WI	2,057	$223,284,096	$108,548.42
MANITOWOC, WI	5	$177,885	$35,577.00
SHEBOYGAN, WI	3	$403,663	$134,554.33

AVERAGE VALUE OF EN , BY PORT FOR FY87
NORTH CENTRAL REGION

PORT	ENTRY COUNT	TOTAL VALUE	AVERAGE/ENTRY
RACINE, WI	943	$101,230,532	$107,349.45
DETROIT, MI	618,944	$26,353,797,327	$42,578.65
PORT HURON, MI	168,887	$5,162,973,662	$30,570.58
SAULT STE MARIE, MI	24,800	$627,628,516	$25,307.60
SAGINAW/BAY CITY, MI	105	$20,239,014	$192,752.51
BATTLE CREEK, MI	2,400	$128,267,682	$53,444.87
GRAND RAPIDS, MI	8,173	$168,511,935	$20,618.12
MARQUETTE,CANADA	17	$413,768	$24,339.29
ALGONAC,CANADA	1	$1,872	$1,872.00
MUSKEGAN, MI	19	$15,160,380	$797,914.74
GRAND HAVEN,CANADA	3	$701,823	$233,941.00
MACKINAC ISLE,MN	1	$6,892	$6,892.00
ALPENA,MN	1	$57,592	$57,592.00
CHICAGO, IL	291,853	$13,860,617,168	$47,491.78
PEORIA, IL	1,941	$250,335,119	$128,972.24
OMAHA, NE	3,452	$212,322,153	$61,507.00
EAST CHICAGO,IN	53	$1,980,610	$37,370.00
GARY,IN	5	$441,225	$88,245.00
OHARE INTL AIRPORT	8,606	$298,885,022	$34,729.84
DES MOINES, IO	1,151	$24,633,754	$21,402.65
DAVENPORT-ROCK ISLAND	907	$60,633,589	$66,850.78
CLEVELAND, OH	27,357	$1,151,206,623	$42,080.88
CINCINNATTI, OH	17,157	$920,494,408	$53,651.27
COLUMBUS, OH	33,114	$3,154,042,749	$95,248.61
DAYTON, OH	39,334	$717,967,592	$18,253.10
TOLEDO, OH	2,851	$494,427,452	$173,422.47

AVERAGE VALUE OF EN1 , BY PORT FOR FY87
NORTH CENTRAL REGION

PORT	ENTRY COUNT	TOTAL VALUE	AVERAGE/ENTRY
ERIE, PA	1,026	$34,840,232	$33,957.34
INDIANAPOLIS, IN	14,391	$466,596,150	$32,422.77
AKRON, OH	1,044	$94,139,579	$90,172.01
LAWRENCEBURG, IN	9	$157,159	$17,462.11
LOUISVILLE, KY	34,760	$387,641,618	$11,151.95
OWENSBORO, KY	388	$38,059,176	$98,090.66
HURON,OH	1	$2,760	$2,760.00
LORAIN,OH	1	$176,528	$176,528.00
ASHTABULA, OH	100	$72,004,737	$720,047.37
AIRBORNE AIR PARK	394	$1,831,985	$4,649.51
EMERY COURIER	3,191	$65,122,986	$20,408.33
UPS COURIER	6,409	$41,017,372	$6,399.96
DHL COURIER	209	$1,287,231	$6,159.00
KANSAS CITY, MO	21,764	$1,018,094,717	$46,778.84
ST JOSEPH, MO	14	$728,020	$52,001.43
ST LOUIS,MO.	19,058	$936,998,568	$49,165.63
WICHITA,KANSAS	3,329	$124,023,235	$37,255.40
SPRINGFIELD,MO	2,471	$319,900,499	$129,451.95
REGION TOTAL	1,623,209	$69,160,626,610	$42,607.35

AVERAGE VALUE OF EN S BY PORT FOR FY87
SOUTHEAST REGION

PORT	ENTRY COUNT	TOTAL VALUE	AVERAGE/ENTRY
NORFOLK, VA	43,526	$5,415,108,008	$124,410.88
NEWPORT NEWS, VA	1,227	$598,833,167	$488,046.59
RICHMOND-PETERSBURG, VA	6,968	$662,945,594	$95,141.45
CAPE CHARLES, VA	1	$1,065	$1,065.00
REEDVILLE, VA	4	$15,736	$3,934.00
CHARLESTON, WV	367	$9,072,568	$24,720.89
1417	1	$88,392	$88,392.00
WILMINGTON, NC	13,607	$925,009,390	$67,980.41
WINSTON-SALEM, NC	6,782	$403,246,574	$59,458.36
DURHAM, NC	4,125	$389,800,759	$94,497.15
BEAUFORT-MOREHEAD CTY,NC	325	$106,757,194	$328,483.67
CHARLOTTE, NC	28,642	$915,483,474	$31,962.97
CHARLESTON, SC	72,951	$5,742,095,463	$78,711.68
GEORGETOWN, SC	47	$19,348,015	$411,659.89
GREENVILLE-SPARTANBRG SC	13,324	$314,959,723	$23,638.53
COLUMBIA, SC	1,569	$46,030,904	$29,337.73
BRUNSWICK, GA	542	$468,646,752	$864,661.90
SAVANNAH, GA	55,796	$4,612,728,040	$82,671.30
ATLANTA, GA	72,908	$2,759,512,904	$37,849.25
TAMPA, FL	21,112	$1,289,341,226	$61,071.49
JACKSONVILLE, FL	19,301	$6,469,729,782	$335,201.79
FERNANDINA BEACH, FL	78	$3,291,525	$42,199.04
CARRABELLE, FL	4	$734,925	$183,731.25
BOCA GRANDE, FL	329	$7,957,025	$24,185.49
ORLANDO, FL	3,373	$172,738,771	$51,212.21
ST. PETERSBURG, FL	72	$4,501,064	$62,514.78

AVERAGE VALUE OF EN. _S BY PORT FOR FY87
SOUTHEAST REGION

PORT	ENTRY COUNT	TOTAL VALUE	AVERAGE/ENTRY
PORT CANAVERAL	402	$187,892,379	$467,393.98
PANAMA CITY, FL	611	$29,807,779	$48,785.24
PENSACOLA, FL	169	$11,313,208	$66,942.06
SOUTHWEST FLORIDA	25	$641,158	$25,646.32
AGUADILLA, PR	58	$2,411,318	$41,574.45
FAJARDO, PR	67	$427,154,132	$6375,434.81
GUANICA, PR	1	$134,715	$134,715.00
HUMACAO, PR	5	$405,863	$81,172.60
MAYAGUEZ, PR	2,108	$243,674,523	$115,595.12
PONCE, PR	1,243	$594,190,828	$478,029.63
SAN JUAN, PR	43,968	$2,447,576,237	$55,667.22
GUAYANILLA,PUERTO RICO	2	$422,478	$211,239.00
SAN JUAN INTL AIRPRT, PR	14,115	$372,260,102	$26,373.37
CHARLOTTE AMALIE, VI	5,487	$138,106,674	$25,169.80
CRUZ BAY, VI	44	$261,454	$5,942.14
CORAL BAY, VI	8	$298,907	$37,363.38
CHRISTIANSTED, VI	2,450	$1,544,169,039	$630,273.08
FREDERIKSTED, VI	2	$246,600	$123,300.00
MIAMI, FL	118,348	$3,631,801,651	$30,687.48
KEY WEST, FL	22	$402,544	$18,297.45
PORT EVERGLADES, FL	12,129	$754,385,254	$62,196.22
WEST PALM BEACH, FL	4,543	$142,000,220	$31,256.93
FORT PIERCE, FLORIDA	42	$542,014	$12,905.10
MIAMI INTL AIRPORT	64,428	$1,107,000,459	$17,181.58
WASHINGTON, DC	18,300	$686,881,563	$37,534.51
ALEXANDRIA, VA	739	$112,605,554	$152,375.58
REGION TOTAL	656,297	$43,774,564,693	$66,699.32

AVERAGE VALUE OF EN S BY PORT FOR FY87
SOUTH CENTRAL REGION

PORT	ENTRY COUNT	TOTAL VALUE	AVERAGE/ENTRY
MOBILE, AL	8,227	$956,532,048	$116,267.42
GULFPORT,MS	923	$215,961,779	$233. . 78.09
PASCAGOULA,MS	579	$1,485,510,865	$2565,649.16
BIRMINGHAM, AL	2,554	$80,769,569	$31,624.73
HUNTSVILLE, AL	2,473	$189,383,753	$76,580.57
MORGAN CITY, LA	131	$1,256,302,353	$9590,094.30
NEW ORLEANS, LA	49,456	$8,184,776,784	$165,496.13
LITTLE ROCK, AR	1,571	$96,175,331	$61,219.18
BATON ROUGE,LA	1,130	$842,770,437	$745,814.55
PORT SULPHUR, LA	11	$371,209	$33,746.27
MEMPHIS, TN	76,941	$1,845,102,707	$23,980.75
NASHVILLE, TN	11,673	$1,403,255,869	$120,213.22
CHATTANOOGA, TN	2,380	$106,388,239	$44,700.94
DESTREHAN,LA	26	$1,664,177	$64,006.81
GRAMERCY,LA	392	$1,583,033,146	$4038,349.86
GREENVILLE, MISS	2	$69,858	$34,929.00
AVONDALE,LA	1	$2,309	$2,309.00
ST. ROSE,LA	2	$26,968	$13,484.00
GOOD HOPE,LA	1	$677	$677.00
VICKSBURG,MISS	34	$1,634,006	$48,059.00
KNOXVILLE, TN	1,796	$44,258,970	$24,643.08
LAKE CHARLES LA	428	$1,427,482,454	$3335,239.38
SHREVESPORT-BOSIER CITY	757	$76,225,206	$100,693.80
FEDERAL EXPRESS COURIER	7,166	$46,873,122	$6,541.04
REGION TOTAL	168,654	$19,844,571,836	$117,664.40

AVERAGE VALUE OF ENT[illegible] BY PORT FOR FY87
SOUTHWEST REGION

PORT	ENTRY COUNT	TOTAL VALUE	AVERAGE/ENTRY
PORT ARTHUR,TX	278	$1,065,370,936	$3904,212.06
SABINE, TX	1	$381	$381.00
BEAUMONT, TX	320	$831,907,088	$2599,709.65
BROWNSVILLE, TX	21,866	$1,396,616,079	$63,871.59
DEL RIO, TX	7,265	$274,852,395	$37,832.40
EAGLE PASS, TX	8,652	$602,251,247	$69,608.33
LAREDO, TX	106,078	$3,985,509,490	$37,571.50
HIDALGO,TX	31,193	$798,742,592	$25,606.47
GRANDE CITY, TX	740	$8,791,700	$11,880.68
SAN ANTONIO, TX	3,326	$69,627,728	$20,934.37
PROGRESSO, TX	1,590	$12,425,324	$7,814.67
ROMA, TX	689	$3,490,602	$5,066.19
EL PASO, TX	69,930	$3,619,179,921	$51,754.32
PRESIDIO, TX	1,024	$65,634,255	$64,095.75
FABENS, TX	49	$705,339	$14,394.67
COLUMBUS, NM	1,079	$34,415,976	$31,896.18
ALBUQUERQUE, NM	1,208	$13,970,120	$11,564.67
DOUGLAS, AZ	8,621	$223,458,413	$25,920.24
LUKEVILLE, AZ	177	$2,593,343	$14,651.66
NACO, AZ	1,386	$23,172,655	$16,719.09
NOGALES, AZ	90,540	$1,834,559,202	$20,262.42
PHOENIX, AZ	15,742	$955,618,092	$60,705.09
SASABE, AZ	42	$3,052,364	$72,675.33
SAN LUIS, AZ	2,561	$80,995,485	$31,626.51
HOUSTON, TX	67,359	$10,690,537,038	$158,709.85
TEXAS CITY,TEXAS	20	$1,216,383	$60,819.15

AVERAGE VALUE OF ENT BY PORT FOR FY87
SOUTHWEST REGION

PORT	ENTRY COUNT	TOTAL VALUE	AVERAGE/ENTRY
HOUSTON INTERCONTL	17,804	$353,079,711	$19,831.48
GALVESTON, TX	2,045	$2,307,774,427	$1128,496.05
FREEPORT, TX	177	$546,440,254	$3087,233.07
CORPUS CHRISTI, TX	1,546	$2,635,050,463	$1704,431.09
LAVACA, TX	36	$78,691,622	$2185,878.39
DALLAS/FT. WORTH, TX	64,561	$3,217,460,621	$49,835.98
AMARILLO,TEXAS	154	$11,600,878	$75,330.33
LUBBOCK,TX	250	$13,123,349	$52,493.40
OKLAHOMA CITY, OK	2,893	$103,194,128	$35,670.28
TULSA, OK	3,908	$134,595,430	$34,441.00
AUSTIN, TX	2,856	$113,073,330	$39,591.50
REGION TOTAL	537,966	$36,132,778,361	$67,165.54

AVERAGE VALUE OF EN1 . BY PORT FOR FY87
PACIFIC REGION

PORT	ENTRY COUNT	TOTAL VALUE	AVERAGE/ENTRY
SAN DIEGO, CA	11,052	$379,571,945	$34,344.19
ANDRADE, CA	91	$1,295,229	$14,233.29
CALEXICO, CA	36,043	$813,951,702	$22,582.80
OTAY MESA, CA.	86,771	$1,524,329,287	$17,567.27
TECATE, CA	8,269	$106,809,628	$12,916.87
LOS ANGELES, CA	529,014	$47,992,284,876	$90,720.25
PORT SAN LUIS HARBOR, CA	15	$561,456	$37,430.40
LONG BEACH,CA	4,077	$1,026,728,284	$251,834.24
PORT HUENEME, CA	136	$365,819,053	$2689,845.98
MORROW,CA	1	$140,507	$140,507.00
LOS ANGELES INT ARPT	292,053	$8,406,996,218	$28,785.86
LAS VEGAS, NV	1,519	$39,755,976	$26,172.47
SAN FRANCISCO INTL AIRPT	197,668	$9,195,023,559	$46,517.31
EUREKA, CA	21	$2,662,849	$126,802.33
FRESNO, CA	517	$20,060,424	$38,801.59
MONTEREY,CA	9	$465,378	$51,708.67
SAN FRANCISCO, CA	138,265	$13,271,299,321	$95,984.52
STOCKTON,CA	27	$7,476,372	$276,902.67
OAKLAND,CA	568	$35,816,193	$63,056.68
RICHMOND,CA	1	$395,008	$395,008.00
ALAMEDA,CA	1	$49,791	$49,791.00
SACRAMENTO,CA	32	$1,627,275	$50,852.34
MARTINEZ,CA	10	$105,098	$10,509.80
REDWOOD CITY,CA	3	$1,296	$432.00
SAN PABLO BAY,CA	24	$851,951	$35,497.96
CARQUINEZ STRAIT,CA	24	$80,510,853	$3354,618.88

AVERAGE VALUE OF ENT BY PORT FOR FY87
PACIFIC REGION

PORT	ENTRY COUNT	TOTAL VALUE	AVERAGE/ENTRY
SUISUN BAY,CA	2	$13,119	$6,559.50
RENO, NV	1,904	$74,396,705	$39,073.98
ASTORIA, OR	96	$17,721,797	$184,602.05
NEWPORT, OR	3	$135,086	$45,028.67
COOS BAY, OR	5	$224,874	$44,974.80
PORTLAND, OR	37,248	$4,998,968,724	$134,207.49
LONGVIEW, WA	4,288	$204,220,067	$47,625.95
BOISE,IDAHO	288	$6,511,115	$22,608.04
VANCOUVER, WA	19	$296,332	$15,596.42
KALAMA, WA	35	$2,979,938	$85,141.09
SEATTLE, WA	97,497	$8,983,812,510	$92,144.53
TACOMA, WA	18,190	$3,759,378,132	$206,672.79
ABERDEEN, WA	22	$570,241	$25,920.05
BLAINE, WA	177,929	$2,299,404,035	$12,923.15
BELLINGHAM, WA	1,232	$151,146,819	$122,684.11
EVERETT, WA	170	$238,711,266	$1404,183.92
PORT ANGELES, WA	1,101	$21,267,691	$19,316.70
PORT TOWNSEND, WA	163	$4,190,498	$25,708.58
SUMAS, WA	33,492	$571,113,059	$17,052.22
ANACORTES, WA	202	$248,691,893	$1231,147.99
NIGHTHAWK, WA	1	$2,170	$2,170.00
DANVILLE, WA	1,032	$5,733,938	$5,556.14
FERRY, WA	2,051	$13,564,264	$6,613.49
FRIDAY HARBOR, WA	11	$415,536	$37,776.00
BOUNDARY, WA	2	$14,852	$7,426.00
LAURIER, WA	3,617	$40,438,823	$11,180.21

AVERAGE VALUE OF EN BY PORT FOR FY87
PACIFIC REGION

PORT	ENTRY COUNT	TOTAL VALUE	AVERAGE/ENTRY
POINT ROBERTS, WA	99	$1,327,902	$13,413.15
OROVILLE, WA	10,066	$110,251,763	$10,952.89
FRONTIER, WA	2,090	$39,090,604	$18,703.64
SPOKANE, WA	512	$6,419,293	$12,537.68
LYNDEN, WA	7,441	$45,945,644	$6,174.66
METALINE FALLS	1,255	$8,460,525	$6,741.45
OLYMPLIA, WA	44	$11,297,724	$256,766.45
SEATTLE-TACOMA INTL ARPT	32,882	$1,645,537,938	$50,043.73
JUNEAU, AK	56	$659,590	$11,778.39
KETCHIKAN, AK	67	$16,301,350	$243,303.73
SKAGWAY, AK	66	$1,096,951	$16,620.47
ALCAN,AK	234	$5,459,916	$23,332.97
WRANGELL, AK	3	$28,866	$9,622.00
DALTON CACHE, AK	61	$1,153,877	$18,916.02
VALDEZ, AK	3	$3,640,361	$1213,453.67
FAIRBANKS, AK	68	$12,296,896	$180,836.71
PETERSBURG, AK	1	$1,810	$1,810.00
SITKA	10	$511,464	$51,146.40
SAND POINT, AK	5	$147,484	$29,496.80
ANCHORAGE, AK	2,326	$96,965,485	$41,687.65
KODIAK, AK	1	$272	$272.00
HONOLULU, HI	20,157	$1,035,942,973	$51,393.71
HILO, HI	76	$21,888,377	$288,004.96
KAHULUI, HI	106	$30,028,181	$283,284.73
NAWILIWILI-PORT ALLEN,HI	10	$836,028	$83,602.80
HONOLULU INTL AIRPRT	12,312	$602,520,797	$48,937.69
REGION TOTAL	1,776,762	$108,616,317,104	$61,131.52
TOTAL FOR ALL REGIONS:	8,040,940	$428,372,312,819	$53,273.91

SOURCE: U.S. Customs Service

II. U.S. Customs Service Data and Statistics (by Port)

B. Revenues Collected

REVENUES - FY 1987

PORTS	DISTRICTS	1 Customs Duty	2 Excise Taxes	3 User Fees	4 Other Receipts	5 TOTAL COLLECTIONS
10101	Portland, Me.	38,790,440.01	2,215,439.79	4,189,630.21	280,470.01	45,492,016.02
10102	Bangor, Me.	254,371.60	5,722.26	201,207.06	3,215.70	464,516.62
10103	Eastport, Me.	152,809.72	193,137.49	45,929.60	5,735.63	397,611.44
10104	Jackman, Me.	95,537.29	274.09	117,723.07	33,280.22	246,814.67
10105	Vanceboro, Me.	1,138.43	2,935.04	5,795.00	4,270.92	14,139.39
10106	Houlton, Me.	159,945.65	103,139.09	227,775.01	2,215,913.04	2,706,773.59
10107	Fort Fairfield, Me.	64,418.09	1,943.40	30,141.00	6,202.05	102,704.54
10108	Van Buren, Me.	120,123.79	8,932.83	17,323.33	9,561.94	155,941.89
10109	Madawaska, Me.	92,521.56	19,474.31	81,640.40	6,392.95	200,029.22
10110	Ft. Kent, Me.	25,011.92	16,917.71	30,209.00	2,941.05	75,960.56
10111	Bath					
10112	Bar Harbor, Me.					
10115	Calais, Me.	118,852.01	2,024,240.09	195,899.22	35,639.39	2,374,630.31
10118	Limestone, Me.	5,313.51	12.06	4,832.45	2,116.30	12,274.32
10122	Jonesport					
10127	Bridgewater, Me.	9,079.39	10.64	8,525.00	806.53	18,421.56
10131	Portsmouth, NH	15,772.31	519,412.93	45,192.00	30,939.49	611,316.73
10132	Belfast, Me.	648.02	220.00	22,291.76	7,409.50	30,569.28
10152	Searsport	39,914,904.90	5,191,820.53	5,224,191.99	452,903.52	50,783,720.94
10181	Lebanon Airport					
DISTRICT 1 PORTLAND		79,829,609.00	10,383,641.06	10,448,383.98	3,105,807.04	103,767,441.08
10201	St. Albans, Vt.	34,837,976.50	2,307,356.51	2,715,672.15	80,466.95	39,941,472.11
10203	Richard, Vt.	48,348.25	200.41	27,271.33	6,111.38	81,931.37
10206	Beecher Falls	65,707.22	102.20	18,290.43	4,374.01	88,473.86
10707	Burlington, Vt.	9,119.91		13,387.39	1.38	22,508.68
10209	Dervy Line, Vt.	943,035.73	31,537.01	282,706.60	42,285.25	1,299,564.59
10211	Norton, Vt.	87,820.14	25,325.27	122,880.64	1,912.00	237,938.05
10212	Highgate/Alburg	8,198,085.48	840,182.40	680,924.49	44,299,548.74	54,026,741.14
DISTRICT 2. ST. ALBANS		44,190,093.23	3,212,703.00	3,861,133.03	44,434,700.51	95,698,630.57
10401	Boston, Ma.	479,548,400.04	25,833,053.67	15,711,549.00	2,277,198.41	523,370,201.20
10402	Springfield, Ma.	10,642.74	266,709.90	287.16	5.63	277,645.43
10403	Worcester, Ma.	2,461.24	7.57	200.00	0.19	2,669.00
10404	Gloucester, Ma.	6,100.87	923.27	30,628.28	2,550.15	40,202.57
(cont'd) NORTHEAST						
10405	New Bedford, Ma.	457.71	865.05	38,538.00	14,680.95	54,541.71
10406	Plymouth, Ma.					
10407	Fall River, Ma.					
10408	Salem, Ma.	16.60		6,920.38	930.04	7,860.02
10410	Bridgeport, CT	35,691.56	2,310,740.63	39.44	5.39	2,346,485.02
10411	Hartford, CT	43,918,795.05	2,542,332.06	2,632,774.91		49,093,902.02
10412	New Haven, CT	34,566.00	3,777,970.26	11,467.74	4.05	3,824,008.05

BEST AVAILABLE COPY

REVENUES - FY 1987

PORTS	DISTRICTS	1 Customs Duty	2 Excise Taxes	3 User Fees	4 Other Receipts	5 TOTAL COLLECTIONS
10413	New London, CT	1,822.16		383.83	0.30	2,206.29
10416	Lawrence, Ma.		279,579.26			279,579.26
10417	Logan Airport	2,969,024.91	64,017.19	110,767.06	27,231.65	3,171,040.81
DISTRICT	4 BOSTON	526,528,146.96	35,076,206.86	18,543,556.00	2,322,600.36	582,470,510.18
10501	Newport, RI					
10502	Providence, RI	68,903,258.00	2,144,401.39	2,032,263.98	92,566.06	73,172,571.11
10503	Mellville					
DISTRICT	5 PROVIDENCE	68,903,258.00	2,144,401.39	2,032,263.98	92,566.06	73,172,571.11
10701	Ogdensburg, NY	1,824,427.40	35,230.93	256,116.01	784,007.15	2,849,761.57
10704	Massena, NY	2,532,572.09	67,067.95	295,335.72	14,590.40	2,932,266.96
10705	Fort Covington	1,730.63				1,730.63
10706	Vincent, NY					
10708	Alexandria Bay	21,516,530.20	875,320.26	1,802,403.35	97,257.90	24,291,519.07
10711	Chateaugay					
10712	Champlain/Rouses	92,039,361.64	19,660,741.32	6,402,449.27	320,623.54	118,511,175.77
10714	Clayton, NY					
10715	Trout River, NY	2,671,099.11	2,159,376.24	1,241,473.46	27,130.54	6,099,079.35
DISTRICT	7 OGDENSBURG	118,762,100.95	22,784,513.77	9,022,361.00	447,602.44	151,036,578.96
10901	Buffalo/Niagra F	244,078,070.35	16,443,675.19	17,017,129.77	2,023,379.06	279,562,254.31
10903	Rochester, NY	894,974.44	349,770.71	18,950.96	2,376.76	1,266,072.87
10904	Oswego, NY	36,207.53	94,072.36	21,734.05	1,023.08	153,037.02
10905	Sodus Point					
10906	Syracuse, NY	455,991.01	658,057.02	25,037.16	89.39	1,139,974.38
10907	Utica, Ny	816.00	35,612.00	11.97		36,439.97
DISTRICT	9 BUFFALO	1,387,089.70	1,139,312.09	66,434.94	3,400.23	2,597,125.04
0						
(Cont'd)	NORTHEAST					
11101	Philadephia, PA	268,381,151.64	22,777,777.16	17,755,272.57	1,363,432.11	310,277,633.48
11102	Chester, PA	14,068,082.96	521.41	3,452,197.85		17,520,802.22
11103	Wilmington, DE	70,680,867.59	1,222,570.53	3,278,073.05	665,494.52	75,847,005.69
11104	Pittsburg, PA	13,082,127.97	34,654.33	661,129.86	4,038.88	13,781,953.04
11105	Paulsboro, NJ					
11106	Wilkes-Barre/Scranton	3,530,475.38	864.43	92,225.53	-0.10	3,623,565.24
11107	Camden, NJ					
11109	Harrisburg, PA	24,810,922.11	225,211.30	480,827.74	518.35	25,517,479.50
11113	Gloucester City, NJ					
11118	Marcus Hook					
11119	Allentown, PA	4,336,754.85		124,054.80	1,020.39	4,461,830.04
11181	Allentwn-Bethlhm Apt					
DISTRICT	11 PHILADELPHIA	398,898,392.50	24,261,609.16	25,836,581.40	2,034,496.15	451,031,069.21
11301	Annapolis					
11302	Cambridge, MD					

REVENUES - FY 1987

		1	2	3	4	5
PORTS	DISTRICTS	Customs Duty	Excise Taxes	User Fees	Other Receipts	TOTAL COLLECTIONS
11303	Baltimore, MD	470,067,601.17	25,030,747.34	14,439,430.37	1,626,759.60	319,964,546.40
11304	Crisfield					
DISTRICT	13 BALTIMORE	470,067,601.17	25,030,747.34	14,439,430.37	1,626,759.60	319,964,546.40
	REGION TOTAL	1,140,180,094.24	69,116,976.23	58,716,499.68	51,390,385.25	1,319,403,955.40
	NEW YORK					
21001	New York Seaport	1,821,111,082.74	86,299,542.40	55,762,978.12	6,352,173.42	1,969,525,776.68
21002	Albany, NY	10,754,730.50	4,882,652.83	369,218.27	23,062.83	16,029,664.43
24601	Newark	398,323,201.44	96,632,368.57	10,122,744.21	2,502,993.32	507,581,307.54
24602	Perth Amboy, NJ	8,205,311.46	1,431,258.43	461,429.20	52,312.23	10,150,311.32
DISTRICT	46 NEWARK	2,238,394,326.14	189,245,822.23	66,716,369.80	8,930,541.80	2,503,287,059.97
24701	JFK Airport	8,113,591.70	6,452,178.07	43,991,623.93	5,314,767.20	63,872,160.90
DISTRICT	47 JFK AIRPORT	8,113,591.70	6,452,178.07	43,991,623.93	5,314,767.20	63,872,160.90
	REGION TOTAL	2,246,507,917.84	195,698,000.30	110,707,993.73	14,245,309.00	2,567,159,220.87
8						
	NORTH CENTRAL					
33301	Raymond, MT	392,929.85	40.48	59,909.33	3,544.28	456,423.94
33302	Eastport, Idaho	5,692,642.53	289.26	2,007,750.82	23,160.16	7,723,842.77
33303	Salt Lake City, UT	8,113,591.70	148,351.05	197,620.97	11,640.75	8,471,204.47
33304	Great Falls, MT	1,918,964.06	3,508.69	835,574.62	288,357.18	3,046,404.55
33305	Butte, MT	11,265.17	1.69	1,272.06	112.00	12,650.92
33306	Turner, MT	4,502.88	125.03	5,816.60	477.00	10,921.51
33307	Denver	33,481,194.40	5,551,621.45	1,136,342.44	1,000,265.51	41,169,423.80
33308	Porthill, Id.	26,386.90	82.45	24,182.44	1,050.00	51,701.79
33309	Scobey, MT	2,107.36		1,066.57		3,173.93
33310	Sweetgrass, MT	7,559,740.73	73,261.71	895,732.74	68,783.51	8,597,518.69
33312	Whitetail, MT	54.01		84.41		138.42
33316	Piegan, MT	22,383.84	312.12	5,368.08	6,099.30	34,163.34
33317	Opheim, MT	1,910.29		1,474.76		3,385.05
33318	Roosville, MT	331,896.94	401.05	151,511.63	12,209.34	496,219.76
33319	Morgan, MT	17,255.36		5,632.42		22,887.78
33321	Whitlash	784.12	5.22	12,325.55	150.00	13,264.89
33322	Del Bonita, MT	152,674.28	25.30	21,028.76	355.00	174,083.34
Natrona County Apt						
DISTRICT	33 GREAT FALLLS	57,730,284.42	5,770,226.38	5,363,294.20	1,416,404.03	70,280,209.03
33401	Pembina, ND	13,130,616.35	72,221.06	1,146,976.16	139,714.35	14,489,527.92
33402	Noyes, MI	6,426,664.72	36,145.19	1,262,498.20	15,158.59	7,740,466.70
33403	Portal, ND	9,264,203.99	788.85	1,347,470.22		10,612,463.06
33404	Neche, ND	331,239.41	20.27	39,185.94	2,825.01	373,270.63
33405	St. John, ND	21,462.41	12.32	5,409.33	30.00	26,914.06

REVENUES - FY 1987

		1	2	3	4	5
PORTS	DISTRICTS	Customs Duty	Excise Taxes	User Fees	Other Receipts	TOTAL COLLECTIONS
33406	Northgate, ND	18,914.69		82,056.83		100,971.52
33407	Walhalla, ND	134,844.37	12.61	35,229.31	3,254.84	173,341.13
33408	Hannah, ND	7,596.62		4,130.31		11,726.93
33409	Sarles, ND	4,050.00	32.44	3,786.85	56.13	7,926.30
33410	Ambrose, ND	420.46		208.29		628.75
33411	Hector, Apt, Fargo	33,562.17		1,616.70		35,178.87
33413	Antler, ND	1,358.04	49.15	1,717.83	9.12	3,134.14
33414	Sherwood, ND	7,046.65	20.70	4,812.01		11,879.36
33415	Hansboro, ND	13,456.20		2,947.34	49.71	16,453.25
8						
33416	Maida, ND	27,853.62	20.92	6,975.23	190.00	35,039.77
33417	Fortuna, ND	89,212.69	20.92	19,034.53	1,116.00	109,384.14
33419	Westhope, ND	13,126.36	23.77	14,137.64	50.00	27,337.77
33420	Noonan, ND	21,331.07	8.20	6,447.76	913.24	28,701.07
33421	Carbury, ND	18,826.05	130.86	4,795.31	11.00	23,774.02
33422	Dunseith, ND	457,107.03	81.59	88,647.53	7,172.30	553,008.45
33423	Warroad, MN	311,567.40	27.97	63,055.43	8,846.75	383,497.55
33424	Baudette, MN	2,083.87	298.43	14,812.59	15,920.52	33,115.41
33425	Pinecreek, MN	59,637.40		10,183.70	450.00	69,271.10
33426	Roseau, MN	868,372.43	20.20	100,131.65	2,007.06	970,531.34
33481	Hector Intl Apt					
DISTRICT	34 PEMBINA	31,263,558.40	109,935.53	4,266,264.69	197,702.56	35,837,543.26
33501	Minneapolis/St. Paul	53,452,544.21	4,384,542.01	2,154,814.05	202,478.86	60,194,379.13
DISTRICT	35 MINNEAPOLIS	53,452,544.21	4,384,542.01	2,154,814.05	202,478.86	60,194,379.13
33601	Duluth MN/Superior	4,812,002.00	0.65	1,745,154.64	60,434.25	6,617,673.54
33602	Ashland, WI					
33604	Intl Falls/Rainier	24,271,910.64	14,707.54	2,735,631.35	58,382.50	27,080,720.03
33608	Superior, WI	158,591.25		197,792.86		356,384.11
33613	Portage, MN	1,054,215.16	1,155.43	261,621.49	12,584.41	1,329,576.49
33614	Silver Bay					
DISTRICT	36 DULUTH	30,294,007.05	15,943.62	4,940,200.34	131,403.16	35,384,354.17
33701	Milwaukee, WI	23,315,215.72	3,386,091.82	930,566.49	112,566.50	27,744,440.53
33702	Marinette, WI					
33703	Green Bay, WI	2,581,626.48	847,303.42	197,136.08	2,313.92	3,628,379.90
33706	Manitowac, WI					
33707	Shebcygan, WI					
33708	Racine, WI	2,247,291.63	113,385.62	165,234.39		2,525,911.04
DISTRICT	37 MILWAUKEE	28,144,133.83	4,346,780.86	1,292,937.16	114,880.42	33,900,732.27
8						
(cont'd)	NORTH CENTRAL					
33801	Detroit, MI	281,955,734.49	145,694,479.67	21,508,021.50	1,553,234.76	450,711,470.42
33802	Port Huron, MI	39,277,314.19	1,159,979.26	6,149,634.78	115,709.84	46,702,638.07
33803	Saulte Ste Marie	7,269,440.34	1,733.61	944,250.50	98,078.68	8,313,503.13
33804	Sginaw-Bay Cty/Flint	127,455.57	340.26	37,744.92	1,579.47	167,120.22

REVENUES - FY 1987

PORTS	DISTRICTS	1 Customs Duty	2 Excise Taxes	3 User Fees	4 Other Receipts	5 TOTAL COLLECTIONS
33805	Battle Creek, MI	4,169,209.24	227.55	179,046.27	916.25	4,350,199.31
33806	Grand Rapids, MI	7,782,189.49	125,307.13	110,839.58	5,120.61	7,943,456.81
33808	Escanaba					
33809	Marquette					
33814	Algonac					
33815	Muskegon, MI	27,495.50				27,495.50
33816	Grand Haven					
33818	Rogers City					
33819	Detour					
33820	Mackinac Island					
33842	Presque Isle					
33843	Alpena					
33844	Ferrysburg					
DISTRICT	38 DETROIT	340,528,846.92	146,982,067.48	28,930,337.55	1,774,631.61	518,215,883.44
33901	Chicago, Ill.	536,623,782.26	25,563,314.98	21,773,849.23	1,286,747.50	585,447,693.89
33902	Peoria, Ill.	402,555.46	218,571.88	297,907.64	0.38	919,035.36
33903	Omaha, Neb.	5,643,519.63	923,048.04	290,112.26	1,914.33	6,858,395.06
33904	East Chicago, IN					
33905	Gary, IN					
33906	O'Hara Intl Apt	233,917.66		70.61	6,456.99	240,445.26
33907	Des Moines, Iowa	1,096,251.20	5,215.73	27,484.46	316.00	1,129,267.39
33909	Davenport	1,174,218.47	80,646.94	81,905.78		1,336,771.19
DISTRICT	39 CHICAGO	545,374,244.68	26,790,798.29	22,471,329.98	1,295,435.20	595,931,808.15
34101	Cleveland, OH	41,943,262.57	2,982,752.45	1,624,055.00	345,180.75	47,095,250.77
34102	Cincinnatti/Lwrncbg,	37,442,745.23	5,885,074.04	1,186,602.28	2,191.79	44,516,613.34
34103	Columbus, OH	169,799,822.06	251,434.52	5,038,044.65	2,567.86	175,091,869.09
34104	Dayton, OH	22,681,841.96	140,214.95	890,839.20	1,609.00	23,624,505.11
34105	Toledo-Sandusky, OH	10,636,398.16	265,852.03	674,008.37	79,232.80	11,655,483.36
0						
34106	Erie, PA	1,020,863.17		55,583.75	5,624.71	1,082,071.63
34108	Ashtabula					
345109	Conneaut					
34110	Indianapolis, Ind.	24,729,022.58	2,641,457.11	672,832.44	3,894.33	28,047,206.46
34112	Akron, OH	2,945,871.36	37.60	123,965.85	881.24	3,070,756.15
34112	Evansville, Ind.					
34115	Louisville, KY	18,075,870.08	11,956,076.49	599,318.39	1,737.15	30,633,002.11
34116	Owensboro-Evansville	2,694,534.02	906,927.75	78,240.27	2.90	3,679,704.94
34117	Huron					
34121	Lorain					
34122	Ashtabula/Conneaut,	426,198.62		88,719.17	9,849.47	524,767.26
34181	Airborne Air Park					
34182	Richenbacker Apt					
34195	Emery World-Wide					
34196	UPS, Louisville, KY					
34197	DHL, Cincinnati					
DISTRICT	41 CLEVELAND	332,316,429.01	24,929,827.02	11,042,201.37	652,772.02	368,941,230.22

REVENUES - FY 1987

PORTS	DISTRICTS	1 Customs Duty	2 Excise Taxes	3 User Fees	4 Other Receipts	5 TOTAL COLLECTIONS
34501	Kansas City, MO	50,963,519.62	2,154,558.68	1,319,544.85	148,391.14	54,586,014.29
34503	St. Louis, MO	32,632,638.40	4,904,208.57	1,140,332.71	1,049,617.12	39,726,796.80
34504	Wichita, KS	1,826,622.53	447,416.71	109,404.81	23,321.33	2,626,045.38
34505	Springfield, MO	18,251,664.01	132,028.87	385,257.55	966.14	18,769,918.57
DISTRICT	45 ST. LOUIS	103,674,444.56	7,038,212.83	2,954,619.92	1,222,295.73	115,709,575.04
37922	Vancouver Precl				613.30	613.30
37923	Calgary Precl				49.76	49.76
37924	Edmonton Precl				30.92	30.92
37925	Montreal Precl				76.09	76.09
37926	Toronto Precl				363.70	363.70
37928	Winnepeg Precl				16.91	16.91
DISTRICT	79 PRECL				1,150.76	1,150.76
	REGION TOTAL	1,449,328,751.65	216,013,792.01	81,261,107.21	6,006,755.49	1,774,210,406.36
	SOUTHEAST					
41401	Norfolk/Nwpt News, V	137,546,075.71	7,145,176.34	6,978,625.30	865,405.96	152,535,283.31
41402	Newport News, VA	10,476,272.43	661.18	930,962.39	314,544.62	11,722,440.62
41404	Richmond/Ptrsburg	47,088,311.01	4,824,461.94	1,116,280.88	26,778.00	53,055,831.83
41406	Cape Charles, VA					
41407	Reedville, VA					
41408	Hopewell					
41409	Charleston, WV	662,767.74	58.12	10,679.34	296.70	673,801.90
DISTRICT	14 NORFOLK	195,773,426.89	11,970,357.58	9,036,547.91	1,207,025.28	217,987,357.66
41501	Wilmington, NC	42,443,405.49	2,460,185.77	1,695,240.64	159,627.31	46,758,459.21
416502	Winston Salem, NC	27,635,736.72	26,593.97	605,499.31	2,893.48	28,270,723.48
41503	Durham, NC	15,578,302.84	34,987.73	599,082.98	285.39	16,212,658.94
41506	Reidsville VC, NC					
41511	Beaufort/Mrhd Cty	700,417.26	12,843.87	232,735.26	40,847.58	986,043.97
41512	Charlotte, NC	49,769,124.13	3,600.21	1,460,772.41	3,677.82	51,245,174.57
DISTRICT	15 WILMINGTON	136,126,986.44	2,530,211.55	4,601,330.60	206,531.58	143,473,060.17
41601	Charleston	264,861,031.49	2,922,430.17	9,632,154.95	427,376.78	277,843,813.39
41602	Georgetown, SC			29,939.94	9,240.38	39,180.32
Grnville/Sprtnbrg, SC		18,755,142.69	191.50	516,303.63	9,419.22	19,281,057.04
41604	Columbia, SC	2,030,618.75	4,510,823.36			6,541,442.11
DISTRICT	16 CHARLESTON	284,847,612.93	7,433,445.03	10,178,398.52	446,036.38	302,905,492.86
41701	Brunswick, GA	7,981,270.02	389.01	278,610.77	17,190.31	8,277,460.11
41703	Savannah	201,683,523.04	4,191,945.50	7,677,576.44	779,959.90	214,333,004.88
41704	Atlana, GA	142,486,377.30	8,175,949.27	4,291,350.33	40,034,797.71	194,988,474.61
DISTRICT	17 SAVANNAH	352,151,170.36	12,368,283.78	12,247,537.54	40,831,947.92	417,598,939.60
41801	TAMPA	110,105,353.05	11,768,704.53	2,522,667.46	1,107,899.37	125,504,624.41

REVENUES - FY 1987

PORTS	DISTRICTS	1 Customs Duty	2 Excise Taxes	3 User Fees	4 Other Receipts	5 TOTAL COLLECTIONS
41803	Jacksonville	312,399,576.72	9,851,959.60	5,493,767.18	222,114.81	327,967,418.31
41805	Fernandina Beach	4,091.54	295.46	8,081.88	1,861.84	14,330.72
41806	Carrabelle					
41807	Boca Grande, Fl	370,596.87		13,139.77		383,736.64
41808	Orlando, FL	7,320,374.62	484,098.00	207,995.14	10,965.47	8,023,433.23
41814	St. Petersburg	1,143,751.61	381.05	17,203.95	462.52	1,161,799.13
#						
(cont'd)	SOUTHEAST)					
41816	Port Canaveral	20,589,437.42	28,122.10	389,562.74	26,864.57	21,033,986.83
41817	Apalachicola					
41818	Panama City, FL	534,712.38	108.84	92,743.53	5,455.37	633,020.12
41819	Pensacola, FL	138,751.52	358,944.44	32,755.99	12,597.14	543,049.09
41820	Port St. Joe, FL			397.00		397.00
41881	SW Fl Reg Apt, Ft. Meyers					
DISTRICT	18 TAMPA	1,156,908,986.45	47,229,181.58	33,274,169.72	83,051,316.93	1,320,463,674.68
44901	Aquadilla, Pr					
44904	Fajardo, Pr	2,423,177.06	5,539.57	702,660.94	59,212.54	3,190,590.11
44905	Guanica					
44906	Humacao					
44907	Mayaguez, GA	758,118.12		371,366.49	17,125.32	1,146,609.93
44908	Ponce, Pr	4,833,611.24		1,032,738.37	107,861.25	5,974,210.86
44909	San Juan	98,489,963.50	2,040.41	4,408,765.82	1,046,706.65	103,947,476.38
44911	Jobos	119,062.26			10,439.01	129,501.27
44912	Guayanilla					
44913	San Juan Intl Apt	272,090.06	72,493.41	15,440.29	73,082.03	433,105.79
DISTRICT	49 SAN JUAN, PR	106,896,022.24	80,073.39	6,530,971.91	1,314,426.80	114,821,494.34
4501	Chrlte Aml St. Thms	4,824,640.71	5.28		614,720.42	4,824,640.71
45102	Cruz Bay, St. John	6,712.05	6,712.05		33,787.53	47,211.63
45103	Coral Bay, St. John					
45104	Chrstanstd, St. Crx	2,586,469.85	56.08		357,514.86	2,944,040.79
45105	Fredriksted, St. Crx					
DISTRICT	51 VIRGIN ISLS.#	7,417,822.61	6,773.41		1,006,022.81	7,815,893.13
#51 includes Preclearance data from St. Thomas and St. Croix						
45201	Miami	170,513,428.59	23,514,664.19	6,042,611.83	2,343,058.37	202,413,762.98
45202	Key West FL	6,008.53	2,562.62	31,021.50	1,274.16	40,866.81
45203	Port Everglades	22,647,933.48	2,638,205.70	1,401,033.97	112,189.65	26,799,362.80
45204	West Palm Beach	5,742,774.04	589,225.65	561,092.47	13,192.40	6,906,284.56
45205	Fort Pierce					
45206	Miami Intl Airport	862,064.00	730,485.13	19,529.59	72,400.02	1,692,558.74
DISTRICT	52 MIAMI	199,772,208.64	27,483,143.29	8,055,289.36	2,542,194.60	237,852,835.89
#						
(cont'd)	SOUTHEAST					
45401	Washington, D.C.	15,310,446.04	4,065,747.49	753,707.57	109,524.87	20,239,425.97
45402	Alexandria, VA	739,617.76	3,042.61	188,161.39	1,649.41	932,471.17
DISTRICT	54 WASHINGTON, D.C.	16,050,063.80	4,068,790.10	941,869.96	111,174.28	21,171,897.14

REVENUES - FY 1987

		1	2	3	4	5
PORTS	DISTRICTS	Customs Duty	Excise Taxes	User Fees	Other Receipts	TOTAL COLLECTIONS
47421	Bermuda Precl					
47422	Freeport Precl	20,544.35	19,512.67		405.95	40,462.97
47423	Nassau Precl				1,391.05	1,391.05
DISTRICT	74 PRECL	20,544.35	19,512.67		1,797.00	49,854.02
	REGION TOTAL	2,103,821,674.35	100,829,408.60	72,610,396.90	89,086,525.66	2,366,541,539.09
	SOUTH CENTRAL					
51901	Mobile, AL	24,287,885.77	2,368,285.63	1,971,950.12	478,763.18	29,106,892.70
51902	Gulfport, MS	1,226,831.50	73,958.04	210,709.03	24,164.16	1,535,662.73
51903	Pascagoula, MS	7,242,670.34		2,642,388.50	38,895.82	9,923,954.66
51904	Birmingham, AL	4,040,942.81	60,585.43	112,468.24	316.11	4,214,312.59
51910	Huntsville, AL	8,887,154.49	31.25	298,163.55	1,044.72	9,186,394.01
DISTRICT	19 MOBILE	45,685,492.91	2,502,060.35	5,235,679.44	543,183.99	53,967,216.69
52001	Morgan City, LA	4,651,236.71		2,005,044.30	8,401.38	6,664,682.39
52002	New Orleans, LA	148,683,179.93	8,300,945.70	14,151,327.37	4,645,617.94	175,781,070.94
52003	Little Rock, AR	1,267,422.20	637,153.43	85,413.70	482.52	1,990,471.85
52004	Baton Rouge, LA	6,162,347.35	397,315.68	1,744,740.46	320,367.25	8,624,770.74
52005	Port Sulphur	1,465.64				1,465.64
52006	Memphis, TN	97,326,894.88	1,752,305.73	2,602,644.96	17,588.08	101,699,433.65
52007	Nashville, TN	49,622,537.30	1,388,497.64	2,200,353.93	1,500.13	53,212,889.00
52008	Chattanooga, TN	12,640,305.71	255,541.53	173,028.65	957.02	13,069,832.91
52009	Destrehan					
52010	Gramercy, LA	7,257,137.32	239.69	2,217,845.72	297,863.92	9,763,086.65
52011	Greenville, MS	2,542.91		109.69		2,652.60
52012	Avondale					
52013	St. Rose					
52014	Good Hope					
52015	Vicksburg, MS	31,548.61		2,064.39	2.68	33,615.68
8						
(cont'd)	SOUTH CENTRAL					
52016	Knoxville, TN	1,769,264.71	436,081.53	74,742.98	96.89	2,280,186.11
52017	Lake Charles, LA	6,224,089.12	5,739.51	2,807,764.06	127,295.21	9,164,887.90
52018	Shrvept/Boissier	1,551,796.57	95,054.76	76,730.67		1,723,582.00
52095	Fed Expr, Memphis					
DISTRICT	20 NEW ORLEANS	337,191,788.96	13,268,875.20	28,141,810.88	5,410,173.02	384,012,648.06
	REGION TOTAL	382,877,281.87	18,236,804.70	40,127,250.09	6,166,326.72	585,579,342.79
	SOUTHWEST					
62101	BEAUMONT/ORANGE/PT.	5,804,697.76	9.39	1,829,231.63	202,328.69	7,836,267.47
62102	SABINE					
62103	ORANGE					
DISTRICT	21 PORT ATHUR	5,804,697.76	9.39	1,829,231.63	202,328.69	7,836,267.47

REVENUES - FY 1987

PORTS	DISTRICTS	1	2	3	4	5
		Customs Duty	Excise Taxes	User Fees	Other Receipts	TOTAL COLLECTIONS
623101	Brwnsvlle/Camron Co	26,852,352.31	163,345.58	1,042,992.79	271,318.44	28,336,209.32
62302	Del Rio, TX	4,275,325.59	4,215.38	157,038.44	119,971.10	4,556,550.51
62303	Eagale Pass, TX	20,177,200.73	4,151.57	339,016.02	80,032.45	20,600,400.77
62304	Laredo, TX	78,391,135.56	7,490,953.00	4,605,295.32	556,962.99	91,044,346.87
62305	Higaldo, TX	41,754,870.30	11,056.82	631,564.27	737,811.96	43,135,303.35
62307	Rio Grande City	669,274.70	452.36	3,261.60	50,002.00	721,991.74
62308	San Antonio, TX	3,403,683.82	926,644.76	105,239.59	55,072.37	4,490,640.54
62309	Progreso, TX	1,870,830.47	3,442.01	90,605.64	130,943.23	2,095,821.35
62310	Roma, TX	245,212.01	4,210.06	36,977.21	51,513.60	337,912.00
62382	Midland Apt					
DISTRICT	23 LAREDO	189,248,369.21	8,609,291.32	10,670,454.22	2,457,685.52	210,985,800.27
62402	El Paso, TX	64,464,876.60	482,771.65	1,436,854.22	484,683.46	66,869,185.93
62403	Presidio, TX	1,553,627.62	2,062.71	114,390.06	25,864.90	1,695,945.29
62404	Fabens, TX	3,494.99	929.90	4,445.00	6,503.94	15,373.83
62406	Columbus, NM	523,697.72	3,640.51	52,192.61	10,108.31	569,639.15
62407	Albuquerque, NM	538,977.59	1,494,092.63	22,134.45	884.52	2,056,089.19
62481	Santa Teresa Apt					
DISTRICT	24 EL PASO	67,084,674.52	1,983,497.40	1,630,016.34	528,045.13	71,226,233.39
8						
(cont'd)	SOUTHWEST					
62601	Douglas, AZ	2,589,789.64	227.20	87,093.67	17,224.63	2,694,335.14
62602	Lukeville, AZ	24,919.69	12,641.39	30,729.32		68,290.40
62603	Naco, AZ	655,961.55	119.20	22,743.38	7,417.57	686,241.70
Nogales, AZ		58,855,284.65	490,416.66	1,621,422.87	302,739.20	61,269,865.38
62605	Phoenix, AZ	23,768,275.57	4,612,909.17	1,076,417.89	22,170.54	29,479,773.17
62606	Sasabe, AZ	67,249.83	22.40	8,006.74	995.50	76,274.47
62608	San Luis, AZ	2,264,502.26	64.20	155,799.62	18,858.31	2,439,224.39
DISTRICT	26 NOGALES	88,225,985.19	5,116,400.22	3,002,213.49	369,405.75	96,714,004.65
65301	Houston/Galveston	303,340,155.95	16,390,731.74	15,303,604.70	4,932,162.26	339,966,654.65
65306	Texas City	43.67			288.42	332.09
65309	Houston Intcontl	12,823,253.89	44,887.59	500,759.04	137,464.78	13,506,365.30
65310	Galveston, TX	17,492,849.25	211,593.20	3,288,059.04	371,189.89	21,363,690.66
65311	Freeport, TX	3,370,182.72	2,226.15	898,445.27	26,963.39	4,297,817.53
65312	Corpus Christi	13,956,389.23	577,569.70	4,415,311.33	421,542.80	19,370,813.06
65313	Port Lavca/Pt Cmft	11,069.16		52,520.66	109,344.95	172,934.77
DISTRICT	53 HOUSTON	350,993,943.87	17,227,008.46	24,458,700.04	5,998,955.69	398,678,608.06
65501	Dallas/Ft. Worth	141,644,061.55	6,121,331.43	3,958,970.94	543,130.01	152,267,493.93
65502	Amarillo, TX	158,359.13	480,471.67	4,224.80	10.45	643,066.05
65503	Lubbock, TX	587,014.30		24,203.15	24.55	611,242.00
65504	Oklahoma City, OK	2,427,761.83	689,383.36	79,027.09	2,174.18	3,198,346.46
65505	Tulsa, OK	5,328,393.57	107,936.43	195,492.39	10,273.49	5,642,095.88
65506	Austin, TX	2,297,847.59	7,456.85	143,521.44	4,566.13	2,453,392.01
DISTRICT	55 DALLAS-FT. WORTH	152,443,437.97	7,466,579.74	4,405,439.81	560,178.01	164,815,636.33
	REGION TOTAL	847,996,410.76	40,342,777.14	44,166,823.90	9,914,270.90	942,420,282.70

REVENUES - FY 1987

		1	2	3	4	5
PORTS	DISTRICTS	Customs Duty	Excise Taxes	User Fees	Other Receipts	TOTAL COLLECTIONS
	PACIFIC					
72501	San Diego	14,737,802.03	14,765.20	634,208.15	545,177.03	17,931,952.41
72502	Andrade, CA	44,911.64	349.22	7,444.06	15,403.91	68,108.83
72503	Calexico, CA	18,600,506.42	7,087,627.69	843,982.26	134,772.54	26,666,888.91
72504	San Ysidro	33,643,449.80	20,236.60	1,718,363.26	395,372.90	40,777,622.56
72505	Tecate, CA	2,245,998.58	1,830,574.46	120,318.76	27,593.17	4,224,484.97
DISTRICT 25 SAN DIEGO #		76,272,668.47	8,953,553.17	3,324,316.49	1,118,599.55	89,669,137.68
72704	Los Angls/Long bch	2,522,500,477.47	48,669,955.42	67,418,202.43	6,906,788.00	2,645,695,423.32
72707	Pt. San Luis Obispo	10,327.84	13,102.12	397.00		23,826.96
72709	Long Beach	1,824.00				1,824.00
72711	El Segundo					
72712	Ventura					
72713	Port Hueneme	10,319,226.78		135,120.77	12,939.96	10,467,287.51
72715	Capitan					
72719	Morro					
72720	Los Angeles Intl Apt	330,737,478.91	115,385.92	10,771,420.30	567,368.36	342,191,573.49
72722	Las Vegas, NV	1,919,721.25	2,154,285.10	71,974.31	5,561.40	4,151,542.06
DISTRICT 27 LOS ANGELES		2,865,489,056.25	50,952,648.56	78,597,114.81	7,492,657.72	3,002,531,477.34
72801	San Fran Intl Apt	248,416,099.04	1,132,446.55	14,511,242.19	151,003.74	264,210,791.82
72802	Eureka	3,316.00		28,634.00	16,075.26	48,025.26
72803	Fresno, CA	801,508.96	108,422.73	29,556.56	33.00	939,521.25
72805	Monterey			1.73		1.73
72809	San Fran/Oakland	492,562,984.19	34,177,116.32	15,169,293.16	1,842,123.90	543,751,517.57
72810	Stockton					
72811	Oakland					
72812	Richmond					
72813	Alameda					
72815	Crockett					
72816	Sacramento					
72820	Martinez					
72821	Redwood City					
72827	Selby					
72828	San Jcaquin River					
72829	San Pablo Bay					
72830	Carqyubez Strait					
72831	Suisun Bay					
72833	Reno, NV	4,184,751.65	1,520,298.97	161,284.78	429.95	5,866,765.35
DISTRICT 28 SAN FRANCISCO #		745,968,659.04	36,938,204.07	29,899,012.42	2,009,665.05	814,815,622.98
	(cont'd) PACIFIC					
72901	Astoria	6,843.13		173,140.57	259,534.20	439,517.90
72902	Newport, OR	184.51		6,092.50	2,132.30	8,409.31

REVENUES - FY 1987

PORTS	DISTRICTS	1 Customs Duty	2 Excise Taxes	3 User Fees	4 Other Receipts	5 TOTAL COLLECTIONS
72903	Coos Bay	210.15	72.15	110,073.50	102,949.35	222,113.15
72904	Portland	23,577,344.41	1,946,952.40	5,847,961.27	910,572.85	32,282,830.93
72905	Longview, WA	5,993,166.21	6,004.34	409,394.40	160,245.55	6,649,010.50
72907	Boise, ID	373,677.69	27.57	9,950.63	90.15	383,746.04
72908	Vancouver, WA					
72910	Columbia River/Astoria/Longview					
DISTRICT	29 PORTLAND, OR.	29,951,434.10	1,953,054.44	6,645,612.87	1,435,524.40	39,985,427.83

Columbia Snake River is the new name for Portland District.

73001	Puget Snd/Seattle	396,194,652.27	9,164,209.06	12,776,115.35	1,447,952.41	419,603,009.09
73002	Tacoma	189,502,012.65	92,661.39	5,114,313.23	423,723.71	195,132,710.98
73003	Aberdeen, WA	191.75	1.54	84,749.50	82,640.00	167,390.79
73004	Blaine, WA	42,369,300.44	1,145,661.69	3,357,123.07	260,008.69	47,132,094.69
73005	Bellingham	1,114,165.67	5.25	316,102.16	36,512.19	1,466,785.27
73006	Everett	114,701.17	3.30	183,244.41	52,515.41	350,464.29
73007	Port Angeles	281,194.41	114.49	111,663.57	59,730.99	452,703.46
73008	Port Townsend	116.49		36,346.39	2,587.22	39,050.10
73009	Sumas	18,362,838.50	4,430.53	871,434.96	45,595.00	19,284,397.79
73010	Anacortes	1,681,906.79	14.64	411,458.66	57,004.64	2,151,184.73
73011	Nighthawk	171.00	3.92	525.00		700.00
73012	Danville, WA	26,655.40	14.07	14,186.92	214.00	41,071.19
73013	Ferry, WA	27,191.18	3.97	26,575.24	600.00	54,370.39
73014	Friday Harbor	15,581.27	13.25	92,505.73	2,027.94	110,128.19
73015	Boundary, WA	400.75		36.47	130.00	567.22
73016	Laurier	144,763.41		71,379.79	3,815.40	219,958.60
73017	Point Roberts, WA	63,499.58		19,360.90	7,858.74	90,719.22
73018	Kenmore Air Harbor					
73019	Oroville, WA	1,194,394.00	371,616.07	228,149.49	22,386.27	1,816,545.83
7320	Frontier, WA	301,743.61		66,941.01	2,716.00	371,400.62
0						
(cont'd)	SPOKANE					
73022	Spokane	285,541.32		14,466.43	815.27	300,823.02
73023	Lyden, WA	1,643,059.09	23,923.19	122,348.00	4,709.18	1,794,040.26
73025	Metaline Falls, WA	1,834,794.11	105.61	21,090.79	1,260.57	1,857,331.08
Olympia		174.40				174.40
73027	Neah Bay					
73029	Seattle-Tacoma Apt	36,352,796.99	4,556.47	1,582,080.79	219,311.59	38,158,745.84
DISTRICT	30 SEATTLE	690,711,847.13	10,087,507.24	25,522,199.46	2,795,724.82	729,797,277.85

Puget Sound is new name for Seattle District

73101	Juneau	20,646.00	8,033.36	25,097.37	9,406.80	63,184.53
73102	Ketchikan	98,613.07	5,066.69	144,905.32	68,165.37	316,750.45
73103	Skagway	35,590.71	289.06	32,314.30	11,569.94	79,752.01
73104	Alcan	109,952.01	41.42	21,283.21	36,041.10	168,118.74
73105	Wrangell	574.13	166.07	9,072.36	3,512.92	13,325.48

REVENUES - FY 1987

		1	2	3	4	5
PORTS	DISTRICTS	Customs Duty	Excise Taxes	User Fees	Other Receipts	TOTAL COLLECTIONS
73104	Dalton Cache, AK	16,360.50	4,737.75	6,948.25	1,649.37	29,695.87
73107	Valdez	1,160,026.30	311.19	16,718.61	151,754.38	1,328,810.48
73111	Fairbanks	427,402.02	8.28	6,304.50	1,685.49	435,402.29
73112	Petersburg					
73115	Sitka	4,105.04	2,543.46	16,700.00	6,087.48	29,376.78
73124	Pelican					
73125	San Point					
73126	Anchorage	5,115,650.93	59,674.93	350,496.81	273,840.66	5,799,890.53
73127	Kodiak					
DISTRICT	31 ANCHORAGE	6,980,938.31	80,872.61	630,042.81	564,45[illegible]	8,264,387.16
73201	Honolulu, HI	43,298,273.67	2,202,524.35	1,903,532.18	450,346.89	48,134,877.81
73202	Hilo, HI	9,552.17		11,793.50	4,111.57	25,457.24
73203	Kahului, HI	69,454.56	11.00	13,317.73	3,515.40	86,298.77
73204	Nawiliwili/Port Alle	2,320.23		2,989.48	1,501.07	6,810.78
73205	Honolulu Itl Apt	2,814,908.89	11,452.65	1,139.51	992,925.84	3,820,566.89
DISTRICT	32 HONOLULU	46,194,509.52	2,213,988.00	2,012,692.32	1,652,600.05	52,073,950.69
	REGION TOTAL	4,461,577,193.62	111,899,910.91	146,630,991.18	17,029,305.82	4,737,137,401.53
SERVICEWIDE		12,652,289,324.33	752,937,749.89	554,229,342.77	195,438,878.84	14,292,452,449.54
* other locations		25,827,157.00	2,870,094.00	67,734,770.00	13,524,366.00	109,956,387.00
	Total	12,678,116,481.33	755,807,843.89	621,964,112.77	208,963,244.84	14,402,408,836.54

REVENUES - FY 1988 6 MONTHS YTD

		1	2	3		5
PORTS	DISTRICTS	Customs Duty	Excise Taxes	User Fees	OTHER RECEIPTS	TOTAL COLLECTIONS
10101	Portland, Me.	8,171,619.24	921,397.96	1,081,411.44	92,963.63	10,267,412.27
10102	Bangor, Me.	773,129.92	19,515.60	220,757.37	568.75	1,013,971.64
10103	Eastport, Me.	5,862.82		7,066.43	1,798.10	14,727.35
10104	Jackman, Me.	719,970.43	104.22	184,003.43	15,870.10	919,948.18
10105	Vanceboro, Me.	606.00	926.25	5,582.92		7,116.05
10106	Houlten, Me.	3,716,925.69	100,425.86	550,903.63	11,072.74	4,380,127.92
10107	Fort Fairfield, Me.	8,342.61	110.00	12,860.49	1,574.66	22,887.76
10108	Van Buren, Me.	16,155.17	7,177.94	13,286.69	2,155.00	38,775.60
10109	Madawaska, Me.	49,010.57	12,449.44	38,135.50	4,392.45	103,987.96
10110	Ft. Kent, Me.	17,656.19	3,840.45	27,676.96	5,372.98	54,546.58
10111	Bath					
10112	Bar Harbor, Me.	656.72		28.65	2.34	687.71
10115	Calais, Me.	3,680,687.35	1,404,672.44	453,085.91	3,638.19	5,542,083.89
10118	Limestone, Me.	1,197.17	7.60	1,695.00	698.63	3,598.40
10122	Jonesport					
10127	Bridgewater, Me.					
10131	Portsmouth, NH					
10132	Belfast, Me.	5,399.28		7,514.35	663.00	13,576.63
10152	Searsport					
10181	Lebanon Airport					
DISTRICT	1 PORTLAND	17,167,220.04	2,470,627.84	2,694,808.77	141,591.37	22,392,248.02
10201	St. Albans, Vt.	8,566,257.07	152,500.02	1,103,093.04	102,492.76	9,924,352.89
10203	Richard, Vt.	40,544.97	133.67	18,960.02	5,178.52	64,817.18
10206	Beecher Falls	72,133.66	39.73	17,420.37	4,536.71	94,130.47
10707	Burlington, Vt.					
10209	Derby Line, Vt.	2,174,733.27	41,306.86	406,046.56	16,423.20	2,638,509.89
10211	Norton, Vt.	3,097,243.12	41,535.60	228,844.98	1,898.29	3,369,521.99
10212	Highgate/Alburg	8,722,799.08	3,551,853.42	552,670.35	55,390.54	12,882,694.39
DISTRICT	2. ST. ALBANS	22,673,702.17	3,787,369.30	2,327,035.32	185,920.02	28,974,026.01
10401	Boston, Ma.	248,224,363.60	15,063,162.56	8,614,356.17	637,206.55	272,539,088.88
10402	Springfield, Ma.	22,372.96	232,290.29	197.00	37.00	254,897.25
10403	Worcester, Ma.	2,100.03	2.21	150.00		2,252.24
10404	Gloucester, Ma.	597.95	8,727.38	23,797.26	2,325.24	35,447.83

(cont'd) NORTHEAST

PORTS	DISTRICTS	Customs Duty	Excise Taxes	User Fees	OTHER RECEIPTS	TOTAL COLLECTIONS
10405	New Bedford, Ma.	1,618.98	41,043.50	22,500.01	9,016.12	74,178.61
10406	Plymouth, Ma.					
10407	Fall River, Ma.					
10408	Salem, Ma.	817.40		4,814.00	962.96	6,594.36
10410	Bridgeport, CT	5,658.49	1,822,044.21	270.60	56.13	1,828,029.43
10411	Hartford, CT	22,180,916.77	887,899.86	1,352,007.47	63,801.31	24,486,625.41
10412	New Haven, CT	54,557.41	3,040,096.06	7,775.33	41.74	3,102,470.54
10413	New London, CT	6,516.64	61,264.39			67,781.03
10416	Lawrence, Ma.		41,374.51			41,374.51
10417	Logan Airport	6,595,928.12	12,468.33	274,529.62	23,447.73	6,906,373.80
DISTRICT	4 BOSTON	277,095,448.35	21,212,313.30	10,300,457.46	734,894.78	309,343,113.89

REVENUES - FY 1988 6 MONTHS YTD

		1	2	3		5
PORTS	DISTRICTS	Customs Duty	Excise Taxes	User Fees	OTHER RECEIPTS	TOTAL COLLECTIONS
10501	Newport, RI					
10502	Providence, RI	27,333,784.03	1,206,347.50	1,304,726.41	60,845.44	29,905,703.38
10503	Mellville					
DISTRICT	5 PROVIDENCE	27,333,784.03	1,206,347.50	1,304,726.41	60,845.44	29,905,703.38
10701	Ogdensburg, NY	136,444,853.94	16,458.16	149,325.51	319,510.71	136,930,148.32
10704	Massena, NY	1,978,934.57	7,353.22	224,416.32	8,396.34	2,219,100.45
10705	Fort Covington					
10706	Vincent, NY					
10708	Alexandria Bay	14,420,106.58	600,182.52	1,189,294.58	65,414.06	16,274,997.74
10711	Chateaugay					
10712	Champlain/Rouses	48,166,892.09	8,558,355.58	3,386,839.51	374,718.90	60,486,806.08
10714	Clayton, NY					
10715	Trout River, NY	2,258,743.94	107,999,123.96	860,224.68	11,521.28	111,129,613.86
DISTRICT	7 OGDENSBURG	203,269,531.12	117,181,473.44	5,810,100.60	779,561.29	327,040,666.45
10901	Buffalo/Niagra F	136,360,232.71	7,208,531.69	10,795,847.46	832,262.40	155,196,874.26
10903	Rochester, NY	30,371.56	363,663.73	2,613.34	130.53	396,779.16
10904	Oswego, NY			4,791.95	810.58	5,602.53
10905	Sodus Point					
10906	Syracuse, NY	39,307.18	1,197,666.87	2,560.34	15.76	1,239,550.15
10907	Utica, Ny	5,237.73	35,612.00			40,849.73
DISTRICT	9 BUFFALO	136,435,149.18	8,805,474.29	10,805,821.09	833,219.27	156,879,663.33
8						
(Cont'd)	NORTHEAST					
11101	Philadephia, PA	142,668,593.98	15,003,109.65	9,728,024.45	1,956,425.37	169,356,153.45
11102	Chester, PA	9,117,356.45	45,403.52	2,047,990.34	116.53	11,210,866.84
11103	Wilmington, DE	31,570,085.98	926,261.29	1,675,535.53	317,599.46	34,489,482.26
11104	Pittsburg, PA	8,950,862.52	15,954.90	449,321.23	11,742.86	9,427,881.51
11105	Paulsboro, NJ					
11106	Wilkes-Barre/Scrnton	1,407,097.98	198.06	21,401.77		1,428,697.81
11107	Camden, NJ					
11109	Harrisburg, PA	14,996,798.52	92,940.43	278,209.73	5.41	15,367,954.09
11113	Gloucester City, NJ					
11118	Marcus Hook					
11119	Allentown, PA	186,613.45	783.00	5,529.59	21.11	192,947.15
11191	Allentwn-Bethlhm Apt	3,909,920.57	402.69	86,729.31	33.26	3,997,085.83
DISTRICT	11 PHILADELPHIA	212,807,329.45	16,085,053.54	14,292,741.95	2,285,944.00	245,471,068.94
11301	Annapolis			19.14		19.14
11302	Cambridge, MD					
11303	Baltimore, MD	239,651,188.43	15,783,837.79	8,451,022.27	672,802.85	264,558,851.34
11304	Crisfield					
DISTRICT	13 BALTIMORE	239,651,188.43	15,783,837.79	8,451,041.41	672,802.85	264,558,870.48
	REGION TOTAL	1,136,433,352.77	186,540,497.00	55,976,733.01	5,696,779.92	1,384,647,361.88
	NEW YORK					
21001	New York Seaport	881,358,742.28	24,757,209.29	29,384,256.43	1,776,448.61	937,278,656.52
21002	Albany, NY	6,145,909.29	2,310,231.26	349,859.78	18,341.92	8,824,342.25

REVENUES - FY 1988 6 MONTHS YTD

		1	2	3		5
PORTS	DISTRICTS	Customs Duty	Excise Taxes	User Fees	OTHER RECEIPTS	TOTAL COLLECTIONS
24601	Newark	205,806,562.90	72900260..83	5,462,873.83	1,182,680.38	212,452,117.11
24602	Perth Amboy, NJ	3,365,677.89	1,613,990.00	237,483.65	34,708.51	5,251,860.85
DISTRICT 46 NEWARK		1,096,676,892.36	20,681,431.26	35,436,473.69	3,812,179.42	1,163,806,976.73
24701	JFK Airport	834,869,386.07	1,187,162.57	24,772,249.47	3,745,899.34	864,574,697.45
DISTRICT 47 JFK AIRPORT		834,869,386.07	1,187,162.57	24,772,249.47	3,745,899.34	864,574,697.45
	REGION TOTAL	1,931,546,278.43	29,868,593.83	60,208,723.16	6,758,878.76	2,028,381,674.18
	NORTH CENTRAL					
33301	Raymond, MT	302,429.83		45,930.01	1,709.50	350,069.34
33302	Eastport, Idaho	4,064,623.86	2,178.48	1,121,585.77	10,295.51	5,198,683.62
33303	Salt Lake City, UT	3,984,583.76	31,923.46	101,856.91	9,935.38	4,128,299.51
33304	Great Falls, MT	824,053.82	261.85	601,735.91	127,062.42	1,553,114.08
33305	Butte, MT	6,098.59		57,759.47	0.97	63,859.03
33306	Turner, MT	921.26	53.04	1,801.50	800.75	3,576.55
33307	Denver	19,502,569.46	3,193,876.51	697,186.96	38,206.42	23,431,839.35
33308	Porthill, Id.	33,418.95	32.88	12,677.84	680.00	46,810.67
33309	Scobey, MT	839.45		338.19		1,177.64
33310	Sweetgrass, MT	4,360,815.45	342.73	485,416.54	38,150.39	4,884,725.11
33312	Whitetail, MT	131.65		47.18		178.83
33316	Piegan, MT	5,448.96	25.45	2,389.58	973.00	8,836.99
33317	Opheim, MT	1,056.47		1,285.38		2,341.85
33318	Roosville, MT	56,010.22	123.04	82,474.33	5,066.57	143,674.16
33319	Morgan, MT	9,764.47	29.07	91,604.98		101,398.52
33321	Whitlash	3,966.73		15,701.47	50.00	19,718.20
33322	Del Bonita, MT	72,823.58	28.89	10,147.29	100.00	83,099.76
Natrona County Apt						
DISTRICT 33 GREAT FALLLS		33,229,556.51	3,228,876.40	3,329,939.31	233,030.91	40,021,403.13
33401	Pembina, ND	9,660,818.42	35,999.21	823,421.56	94,162.67	10,614,401.86
33402	Noyes, MI	3,862,091.82	29,341.83	850,759.73	7,556.90	4,749,750.28
33403	Portal, ND	6,115,407.32	591.18	805,317.69	6,779.75	6,928,095.94
33404	Neche, ND	180,044.77	10.99	22,789.92	201.80	203,047.48
33405	St. John, ND	13,630.49		3,432.63		17,063.12
33406	Northgate, ND	19,536.94	1,123.22	68,757.76	150.00	89,567.92
33407	Walhalla, ND	92,949.83	1,900.08	15,627.95	1,307.55	111,785.41
33408	Hannah, ND	1,035.37		732.09		1,767.46
33409	Sarles, ND	5,388.26		2,530.23		7,918.49
33410	Ambrose, ND	275.61		108.82		384.43
33411	Hector, Apt, Fargo	23,568.53	1.98	740.41	100.00	24,410.92
33413	Antler, ND	2,620.53		900.16	25.00	3,545.69
33414	Sherwood, ND	4,859.53		2,515.87		7,375.40
33415	Hansboro, ND	7,197.74		2,634.05	86.72	9,918.51
33416	Maida, ND	15,982.30		4,098.68	80.00	20,160.98
33417	Fortuna, ND	55,151.65	0.86	13,528.88	104.25	68,785.64
33419	Westhope, ND	5,287.29	1.23	8,941.64	2,810.00	17,040.16
33420	Noonan, ND	117,714.64	117,714.64	12,490.03	200.00	248,119.31
33421	Carbury, ND	10,977.13		2,362.52	200.00	13,539.65

REVENUES - FY 1988 6 MONTHS YTD

PORTS	DISTRICTS	1 Customs Duty	2 Excise Taxes	3 User Fees	OTHER RECEIPTS	5 TOTAL COLLECTIONS
33422	Dunseith, ND	404,264.77	1,160.45	54,170.76	3,249.62	542,845.60
33423	Warroad, MN	188,655.59	2,934.24	43,595.95	2,174.17	237,359.95
33424	Baudette, MN	1,431.66	65.57	6,169.75	4,652.94	12,319.92
33425	Pinecreek, MN	20,464.40		5,275.99	1,850.00	27,590.39
33426	Roseau, MN	420,904.69	4.05	39,096.62	211.50	460,216.94
33481	Hector Intl Apt					
DISTRICT	34 PEMBINA	21,310,251.28	190,849.53	2,790,087.47	126,102.95	24,417,211.45
33501	Minneapolis/St. Paul	25,880,835.57	2,030,689.42	1,125,399.46	161,666.55	29,198,591.00
DISTRICT	35 MINNEAPOLIS	25,880,835.57	2,030,689.42	1,125,399.46	161,666.55	29,198,591.00
33601	Duluth MN/Superior	2,796,909.67	7.26	871,252.35	34,911.00	3,703,081.00
33602	Ashland, WI					
33604	Intl Falls/Rainier	18,254,910.07	13,926.75	1,707,913.14	8,254.06	19,985,013.62
33610	Superior, WI	77,654.08		82,618.17		160,272.25
33613	Portage, MN	631,854.27	142.01	138,797.01	1,830.50	772,623.79
33614	Silver Bay					
DISTRICT	36 DULUTH	21,761,336.89	14,076.02	2,800,580.67	44,997.16	24,620,990.74
33701	Milwaukee, WI	13,964,905.61	1,811,434.03	515,392.38	130,031.28	16,421,743.30
33702	Marinette, WI					
33703	Green Bay, WI	1,124,169.72	349,904.70	96,407.33	1,463.34	1,572,025.09
33706	Manitowac, WI					
33707	Sheboygan, WI					
33708	Racine, WI	1,918,256.49	48,510.21	127,467.57	494.07	2,094,728.34
DISTRICT	37 MILWAUKEE	17,007,331.82	2,209,928.94	739,267.28	131,988.69	20,088,496.73
0						
(cont'd)	NORTH CENTRAL					
33801	Detroit, MI	150,093,023.40	97,106,252.72	14,269,323.38	1,507,732.43	263,056,343.01
33802	Port Huron, MI	24,664,139.58	572,785.73	3,533,715.51	43,085.05	28,813,725.87
33803	Saulte Ste Marie	4,701,611.30	2,559.22	493,778.32	24,130.21	5,222,087.05
33804	Sginaw-Bay Cty/Flnt	66,929.00	0.20	7,754.40	626.56	75,319.12
33805	Battle Creek, MI	2,742,392.17	46.21	120,120.73	1,467.43	2,864,944.54
33806	Grand Rapids, MI	5,624,196.00	59,023.05	102,535.09	933.67	5,786,687.81
33808	Escanaba					
33809	Marquette					
33814	Algonac					
33815	Muskegon, MI					
33816	Grand Haven					
33818	Rogers City					
33819	Detour					
33820	Mackinac Island					
33842	Presque Isle					
33843	Alpena					
33844	Ferrysburg					
DISTRICT	38 DETROIT	187,893,212.33	97,820,676.21	18,527,235.51	1,577,903.25	305,819,107.40
33901	Chicago, Ill.	289,543,523.94	14,772,519.41	12,580,309.30	816,143.87	316,712,496.52
33902	Peoria, Ill.	7,694,914.44	143,313.55	520,203.91	127.00	8,358,558.90
33903	Omaha, Neb.	3,638,375.56	636,746.22	201,016.02	1,149.45	4,477,287.25
33904	East Chicago, IN					
33905	Gary, IN					

REVENUES - FY 1988 6 MONTHS YTD

PORTS	DISTRICTS	1 Customs Duty	2 Excise Taxes	3 User Fees	OTHER RECEIPTS	5 TOTAL COLLECTIONS
33906	O'Hara Intl Apt	19,743.02		170.00	2,759.51	22,673.33
33907	Des Moines, Iowa	636,728.95	107.07	18,970.70	11.37	655,826.97
33908	Davenport	2,056,995.62	20,094.40	158,048.21	23.27	2,235,161.50
DISTRICT	39 CHICAGO	302,590,282.33	15,580,781.45	13,470,726.22	820,214.55	332,462,004.55
34101	Cleveland, OH	20,334,994.90	2,109,239.12	869,071.00	381,426.90	23,694,932.00
34102	Cincinnatti/Lwrncbg,	18,864,710.10	3,345,832.63	587,134.92	2,421.07	22,800,099.60
34103	Columbus, OH	92,035,435.36	535,927.77	2,749,368.90	1,371.36	95,322,102.47
34104	Dayton, OH	5,521,405.93	176.05	241,318.69	1,764.73	5,764,745.40
34105	Toledo-Sandusky, OH	5,702,614.94	177,546.99	357,776.73	25,256.56	6,263,195.22
0						
34106	Erie, PA	411,958.29		32,350.34	1,339.30	445,647.93
34108	Ashtabula					
34109	Conneaut					
34110	Indianapolis, Ind.	20,649,174.76	2,360,817.30	473,342.37	476.26	23,483,810.69
34112	Akron, OH	404,715.94		10,042.51	146.97	414,905.42
34112	Evansville, Ind.					
34115	Louisville, KY	7,225,980.06	6,806,299.15	285,357.29	599.11	14,318,235.61
34116	Owensboro-Evansville	817,778.04	466,563.09	22,474.23	0.04	1,306,816.20
34117	Huron					
34121	Lorain					
34122	Ashtabula/Conneaut,	325,274.62		51,970.72	4,545.58	381,790.92
34181	Airborne Air Park	268,333.52	40.00	15,201.19	278.97	283,853.68
34182	Rickenbacker Apt				309.34	309.34
34195	Emery World-Wide	9,587,477.07	18.10	429,974.25		10,017,469.42
34196	UPS, Louisville, KY	8,672,477.43		250,004.96		8,922,482.39
34197	DHL, Cincinnati	278,673.93		7,294.03		285,967.96
DISTRICT	41 CLEVELAND	191,101,085.85	15,881,680.20	6,382,762.29	340,136.99	213,705,665.33
34501	Kansas City, MO					
34503	St. Louis, MO	31,947,818.48	1,194,532.07	869,125.78	5,308.52	34,016,785.65
34504	Wichita, KS	6,411,938.79	433,604.42	45,347.36	1,563.33	6,892,453.90
34505	Springfield, MO	6,978,609.71	40,530.72	125,484.56	26.25	7,144,651.24
DISTRICT	45 ST. LOUIS	45,338,366.98	1,668,668.01	1,039,957.70	6,898.10	48,053,890.79
37922	Vancouver Precl				1,153.35	1,153.35
37923	Calgary Precl				242.49	242.49
37924	Edmonton Precl				6.70	6.70
37925	Montreal Precl				781.39	781.39
37926	Toronto Precl				521.97	521.97
37928	Winnepeg Precl				46.81	46.81
DISTRICT	79 PRECL				2,752.71	2,752.71
	REGION TOTAL	820,231,403.99	136,595,536.76	49,080,476.67	3,204,105.41	1,009,191,522.83
	SOUTHEAST					
41401	Norfolk/Nwpt News, V	81,338,663.79	4,424,256.96	4,437,962.72	402,425.60	90,603,309.07
41402	Newport News, VA	8,101,160.54	425.93	621,586.35	133,379.59	8,856,552.41
41404	Richmond/Ptrsburg	24,620,222.91	2,893,580.32	614,379.63	2,706.57	28,130,889.43
41406	Cape Charles, VA					
41407	Reedville, VA					
41408	Hopewell					

REVENUES - FY 1988 6 MONTHS YTD

		1	2	3		5
PORTS	DISTRICTS	Customs Duty	Excise Taxes	User Fees	OTHER RECEIPTS	TOTAL COLLECTIONS
41409	Charleston, WV	301,430.10		7,619.37	0.10	309,045.75
DISTRICT	14 NORFOLK	114,361,405.42	7,310,263.21	5,681,540.09	538,519.94	127,899,816.66
41501	Wilmington, NC	19,552,051.30	1,661,211.96	798,169.10	123,322.73	22,134,755.09
416502	Winston Salem, NC	7,174,171.82	772,923.77	169,431.98	145.33	8,116,672.90
41503	Durham, NC	9,316,564.78	18,502.47	372,114.77	29.93	9,707,211.95
41506	Reidsville VC, NC					
41511	Beaufort/Mrhd Cty	323,493.88	6,460.86	116,709.60	15,254.43	461,918.77
41512	Charlotte, NC	26,312,116.61	2,564.28	800,714.42	12,216.81	27,127,612.12
DISTRICT	15 WILMINGTON	62,678,398.39	2,461,663.34	2,257,139.87	150,969.23	67,548,170.83
41601	Charleston	145,649,933.11	1,647,505.26	5,113,250.94	226,617.96	152,637,307.27
41602	Georgetown, SC	134,827.40		14,658.84	17,626.26	167,112.50
Grnville/Sprtnbrg, SC						
41604	Columbia, SC	913,718.31	2,091,012.26	46,919.50	363.32	3,052,013.39
DISTRICT	16 CHARLESTON	146,698,478.82	3,738,517.52	5,174,829.28	244,607.54	155,856,433.16
41701	Brunswick, GA	11,630,102.55	17.89	599,022.00	10,692.38	12,239,834.82
41703	Savannah	98,610,341.87	2,058,066.55	3,829,046.98	360,474.25	104,857,929.65
41704	Atlana, GA	79,206,540.80	4,452,673.71	2,362,438.99	13,502.40	86,035,155.90
DISTRICT	17 SAVANNAH	189,446,985.22	6,510,758.15	6,790,507.97	384,669.03	203,132,920.37
41801	TAMPA	52,921,073.64	6,841,617.52	1,380,628.87	440,891.03	61,584,211.06
41803	Jacksonville	133,212,967.40	5,667,912.81	3,515,311.79	120,391.37	142,516,583.37
41805	Fernandina Beach	185,858.42	27,681.67	26,003.23	1,733.82	241,277.14
41806	Carrabelle					
41807	Boca Grande, Fl	19,579.10				19,579.10
41808	Orlando, FL	4,639,834.54	302,968.65	124,648.89	1,751.81	5,069,203.89
41814	St. Petersburg	872,651.23	967.53	24,034.59	216.08	897,869.43
(cont'd) SOUTHEAST)						
41816	Port Canaveral	12,749,473.98	9,887.74	272,158.67	11,635.06	13,043,155.45
41817	Apalachicola					
41818	Panama City, FL	395,703.32	625.12	45,992.29	3,269.40	445,590.13
41819	Pensacola, FL	48,034.18	137,886.89	15,877.91	1,535.71	203,334.69
41820	Port St. Joe, FL			397.00		397.00
41881	SW Fl Rag Apt, Ft. M	267,020.39		7,574.71		274,595.10
DISTRICT	18 TAMPA	205,312,196.20	12,989,547.93	5,412,627.95	581,424.28	224,295,796.36
44901	Aquadilla, Pr	94.00				94.00
44904	Fajardo, Pr	1,306,309.46	2,597.90	416,265.42	42,948.42	1,768,121.20
44905	Guanica					
44906	Humacao					
44907	Mayaguez, GA	454,942.64	25.00	225,607.81	7,272.93	687,848.38
44908	Ponce, Pr	2,647,313.31	7.45	531,167.70	36,199.15	3,214,687.61
44909	San Juan	49,167,418.16	13,330.25	2,142,381.51	517,360.43	51,840,490.35
44911	Jobos					
44912	Guayanilla					
44913	San Juan Intl Apt	284,363.67	36,799.97	10,154.44	83,258.20	414,576.28
DISTRICT	49 SAN JUAN, PR	53,860,441.24	52,760.65	3,325,576.88	687,039.13	57,925,817.90
4501	Chrlte Aml St. Thms					
45102	Curz Bay, St. John	982.78			7,773.41	8,756.19

REVENUES - FY 1988 6 MONTHS YTD

		1	2	3		5
PORTS	DISTRICTS	Customs Duty	Excise Taxes	User Fees	OTHER RECEIPTS	TOTAL COLLECTIONS
45103	Coral Bay, St. John					
45104	Chrstanstd, St. Crx	1,501,857.35	9.24		203,418.38	1,705,284.97
45105	Fredriksted, St. Crx					
DISTRICT	51 VIRGIN ISLS.#	1,502,840.13	9.24		211,191.79	1,714,041.16
#51 included Preclearance data from St. Thomas and St. Croix						
45201	Miami	98,957,728.08	15,515,693.98	3,410,670.33	1,487,187.83	119,371,280.22
45202	Key West FL	1,167,902.34	1,732.95	13,862.16	642.29	1,183,439.74
45203	Port Everglades	13,974,106.42	1,139,345.50	770,851.91	69,630.26	15,954,034.29
45204	West Palm Beach	3,881,647.95	254,028.37	220,727.41	18,210.04	4,364,613.77
45205	Fort Pierce					
45206	Miami Intl Airport	1,267,013.99	367,743.96	53,848.69	32,785.17	1,721,391.81
DISTRICT	52 MIAMI	119,248,539.78	17,278,564.76	4,469,160.50	1,608,474.79	142,596,759.83
8						
(cont'd)	SOUTHEAST					
45401	Washington, D.C.	8,461,018.25	2,342,889.49	445,171.01	54,799.98	11,303,878.73
45402	Alexandria, VA	403,692.42	726.22	43,739.39	550.83	448,708.06
DISTRICT	54 WASHINGTON, D.C.	8,864,710.67	2,343,615.71	488,910.40	55,350.81	11,752,586.79
47421	Bermuda Precl	33,966.63	27,223.85		1,993.35	62,183.83
47422	Freeport Precl	31,274.91	13,665.31		232.28	45,172.50
47423	Nassau Precl	58,049.55	16,025.21		2,040.20	76,114.96
DISTRICT	74 PRECL	123,291.09	56,914.37			184,471.29
			113,828.74		4,265.83	348,942.58
	REGION TOTAL	902,697,386.96	227,457.48			737,085.16
			428,891.11			1,412,586.49
	SOUTH CENTRAL		842,316.91			2,788,008.48
51901	Mobile, AL	11,425,030.34	1,669,038.61		1,198,957.15	5,403,806.00
51902	Gulfport, MS	1,289,415.42	3,281,102.05		173,110.15	18,703,388.71
51903	Pascagoula, MS	3,634,256.66	6,448,376.96		1,358,302.47	21,197,658.04
51904	Birmingham, AL	2,023,473.49	12,669,896.44		83,536.02	41,657,432.52
51910	Huntsville, AL	4,[illegible],472.28	24,919,181.77		163,015.01	81,902,278.55
DISTRICT	19 MOBILE	22,588,648.11	48,977,606.63		2,976,921.60	161,024,556.62
52001	Morgan City, LA	12,768,748.26		3,699,668.04	3,021.62	16,471,437.92
52002	New Orleans, LA	78,595,949.62	4,398,188.47	5,852,327.87	1,281,985.22	90,128,451.18
52003	Little Rock, AR	543,333.57	334,541.71	32,076.03	90.72	910,042.03
52004	Baton Rouge, LA	5,355,319.24	266,471.02	1,075,698.24	133,988.67	6,831,597.97
52005	Port Sulphur					
52006	Memphis, TN	54,244,869.13	606,633.00	1,432,414.30	49,803.99	56,333,721.30
52007	Nashville, TN	23,725,647.69	701,974.45	1,113,732.20	917.20	25,542,271.54
52008	Chattanooga, TN	7,709,621.59	46,407.69	95,752.54	5.42	7,851,787.24
52009	Destrehan					
52010	Gramercy, LA	2,777,060.08		1,028,038.06	125,655.25	3,930,773.39
52011	Greenville, MS					
52012	Avondale					
52013	St. Rose					
52014	Good Hope					
52015	Vicksburg, MS	104,363.78		3,757.28	6.30	108,127.36
8						
(cont'd)	SOUTH CENTRAL					
52016	Knoxville, TN	994,422.05	112,093.46	35,071.02	89.83	1,142,477.14
52017	Lake Charles, LA	3,623,301.62	4,322.32	1,440,311.66	65,436.71	5,133,452.31

REVENUES - FY 1988 6 MONTHS YTD

PORTS	DISTRICTS	Customs Duty	Excise Taxes	User Fees	OTHER RECEIPTS	TOTAL COLLECTIONS
52010	Shrvept/Boissier	934,197.36	42,925.09	35,719.62		1,012,842.07
52095	Fed Expr, Memphis	10,640,671.02	5.45	373,113.57	72.29	11,013,842.33
DISTRICT	22 NEW ORLEANS	202,017,704.93	6,314,364.34	16,217,701.23	1,660,993.30	226,410,043.08
	REGION TOTAL	224,398,433.04	8,630,540.21	22,083,406.55	2,036,979.76	346,221,798.30
	SOUTHWEST					
62101	BEAUMONT/ORANGE/PT.	5,323,611.30		1,312,701.90	99,634.30	6,735,949.50
62102	SABINE					
62103	ORANGE					
DISTRICT	21 PORT ATHUR	5,323,611.30		1,312,701.90	99,634.30	6,735,949.50
623101	Brwnsvlle/Camron Co	18,366,370.50	211,452.30	752,602.74	273,857.96	19,604,363.50
62302	Del Rio, TX	2,311,350.36	1,691.54	120,133.22	41,441.14	2,474,616.26
62303	Eagale Pass, TX	7,934,207.29	2,174.02	320,471.20	24,103.26	8,280,955.77
62304	Laredo, TX	43,231,051.06	3,999,760.46	2,737,854.92	544,696.77	50,513,363.21
62305	Higaldo, TX	23,919,972.96	124,144.27	463,353.96	103,470.81	24,610,942.00
62307	Rio Grance City	520,310.00	233.05	16,600.09	6,200.32	543,353.14
62308	San Antonio, TX	2,345,092.67	481,057.55	66,902.83	18,959.91	2,912,012.96
62309	Progreso, TX	1,471,371.56	2,558.62	39,953.14	26,536.02	1,540,419.34
62310	Roma, TX	176,954.33	2,002.70	25,105.17	28,660.40	233,612.60
62382	Midland Apt					
DISTRICT	23 LAREDO	110,924,736.21	4,825,955.31	7,174,461.23	1,267,215.19	124,194,417.94
62402	El Paso, TX	38,117,089.42	349,454.01	1,334,742.17	801,635.06	40,602,920.66
62403	Presidio, TX	1,120,309.22	984.95	125,883.42	2,496.40	1,249,673.99
62404	Fabens, TX	1,382.87	540.05	1,655.00	2,714.74	6,292.66
62406	Columbus, NM	393,233.06	1,906.00	53,152.56	2,620.00	450,913.62
62407	Albuquerque, NM	360,485.14	524,751.74	13,062.26	86.08	898,385.22
62401	Santa Teresa Apt			75.00		75.00
DISTRICT	24 EL PASO	39,992,580.71	877,637.15	1,528,578.41	809,553.08	43,208,261.35
0						
(cont'd)	SOUTHWEST					
62601	Douglas, AZ	1,380,399.64	37.40	87,142.44	9,516.00	1,477,095.48
62602	Lukeville, AZ	27,420.12	2.30	12,162.04	6,705.64	46,290.10
62603	Naco, AZ	260,357.50	3.20	11,802.83	4,449.68	276,613.21
Nogales, AZ						
62605	Phoenix, AZ	11,035,766.40	3,047,827.30	345,033.43	19,469.91	15,448,097.12
62606	Sasabe, AZ	21,479.92		3,042.00	1,056.00	27,570.72
62608	San Luis, AZ	2,063,243.39	16.10	137,008.65	14,354.65	2,214,622.79
DISTRICT	26 NOGALES	15,508,675.13	3,047,884.30	798,192.19	55,551.00	19,490,305.42
65301	Houston/Galveston	174,949,125.69	8,564,545.28	9,380,135.73	1,190,535.91	194,084,342.41
65306	Texas City					
65309	Houston Intcontl	8,043,971.35	10,437.47	373,020.37	33,279.22	8,460,708.61
65310	Galveston, TX	10,557,164.32	172,509.03	1,572,505.92	265,706.29	12,568,125.56
65311	Freeport, TX	1,947,981.73		504,418.02	16,570.02	2,468,911.37
65312	Corpus Christi	7,105,590.73	312,754.07	2,314,794.63	229,969.69	7,410,354.00
65313	Port Lavca/Pt Cmft	53,058.01		30,191.01	46,535.52	129,784.14
DISTRICT	53 HOUSTON	202,654,020.03	9,060,327.05	14,175,147.28	1,782,697.45	225,130,229.09
65501	Dallas/Ft. Worth	77,907,270.13	2,162,456.09	2,398,306.55	342,424.20	82,810,544.97
65502	Amarillo, TX	62,390.20	133,704.71	20,057.00	1,800.19	217,952.90

REVENUES - FY 1988 6 MONTHS YTD

PORTS	DISTRICTS	Customs Duty	Excise Taxes	User Fees	OTHER RECEIPTS	TOTAL COLLECTIONS
65503	Lubbock, TX	324,690.23		15,143.44		339,833.67
65504	Oklahoma City, OK	1,756,504.21	334,667.55	76,236.58	237.35	2,167,725.89
65505	Tulsa, OK	2,054,245.02	30,249.51	87,472.46	2,364.37	2,182,331.36
65506	Austin, TX	762,125.04	5,813.58	59,838.36	113.69	827,891.39
DISTRICT	55 DALLAS-FT. WORTH	82,847,313.63	2,674,891.36	2,457,935.27	346,140.00	88,546,200.26
	REGION TOTAL	452,030,096.31	20,494,697.97	26,334,306.38	2,040,819.24	500,577,494.06
	PACIFIC					
72501	San Diego	7,689,177.09	7,377.63	295,542.15	265,418.58	8,257,515.45
72502	Andrade, CA	20,825.49	235.27	5,190.28	4,478.73	30,729.77
72503	Calexico, CA	10,425,911.38	2,998,918.95	533,148.21	87,793.42	14,045,763.96
72504	San Ysidro	22,410,679.39	24,074.86	1,168,804.02	182,911.38	23,786,469.65
72505	Tecate, CA	1,693,474.03	789,193.44	80,667.46	11,211.43	2,574,546.36
DISTRICT	25 SAN DIEGO	42,240,067.38	3,819,860.15	2,083,344.12	551,813.54	
0						48,695,025.19
72704	Los Angls/Long bch	1,240,684,482.30	32,327,548.49	37,140,507.13	3,884,575.33	1,314,037,113.25
72707	Pt. San Luis Obispo					
72709	Long Beach	3,646,231.10		17,335.97		3,663,567.07
72711	El Segundo					
72712	Ventura					
72713	Port Hueneme	631,714.60		27,701.52	7,718.32	667,134.52
72715	Capitan					
72719	Morro					
72720	Los Angeles Intl Apt	170,327,653.77	40,033.99	6,476,369.90	423,012.75	177,267,070.41
72722	Las Vegas, NV	819,227.54	1,363,055.93	35,174.93		2,217,458.40
DISTRICT	27 LOS ANGELES	1,416,109,309.39	33,730,638.41	43,697,089.45	4,315,306.40	1,497,852,343.65
72801	San Fran Intl Apt	184,148,263.04	815,806.57	10,104,347.98	98,872.00	195,167,291.19
72802	Eureka			17,096.00	14,813.46	31,909.46
72803	Fresno, CA	308,477.21	29,260.08	14,385.04	648.21	352,771.34
72805	Monterey					
72809	San Fran/Oakland	209,098,714.06	20,173,834.32	7,361,159.16	889,337.69	237,523,045.23
72810	Stockton			50.60		50.60
72811	Oakland					
72812	Richmond					
72813	Alameda					
72815	Crockett					
72816	Sacramento					
72820	Martinez					
72821	Redwood City					
72827	Selby					
72828	San Joaquin River					
72829	San Pablo Bay					
72830	Carqyubez Strait					
72831	Suisun Bay					
72823	Reno, NV	3,057,165.92	576,517.94	92,248.59	354.25	3,726,286.70
DISTRICT	28 SAN FRANCISCO	396,612,621.03	21,595,418.91	17,589,288.17	1,004,826.41	436,801,354.52
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(cont'd) PACIFIC

REVENUES - FY 1988 6 MONTHS YTD

		1	2	3		5
PORTS	DISTRICTS	Customs Duty	Excise Taxes	User Fees	OTHER RECEIPTS	TOTAL COLLECTIONS
72901	Astoria		23,130.53		90,250.53	113,397.06
72902	Newport, OR	23,130.53		3,590.00	2,770.42	29,514.95
72903	Coos Bay	117.75	39.37	40,140.00	51,530.14	99,829.26
72904	Portland	100,421,347.02	1,132,150.42	3,545,342.93	320,470.23	113,419,310.60
72905	Longview, WA	1,394,117.25	15,197.73	216,040.34	81,134.72	1,706,490.04
72907	Boise, ID	132,427.67		4,407.81	101.41	137,136.89
72908	Vancouver, WA					
72910	Columbia River/Astoria/Longview					
DISTRICT	29 PORTLAND, OR.	109,971,350.22	1,170,526.05	3,817,329.00	546,201.45	115,505,486.90

Columbia Snake River is the new name for Portland District.

73001	Puget Snd/Seattle	189,676,440.86	5,739,331.09	7,268,215.79	1,065,512.03	203,749,500.57
73002	Tacoma	102,368,842.90	58,706.90	3,054,981.90	116,636.44	105,598,368.22
73003	Aberdeen, WA	278.60		29,649.00	37,190.54	67,118.14
73004	Blaine, WA	22,038,981.77	600,189.28	1,932,252.21	175,522.66	24,746,945.92
73005	Bellingham	539,633.56		185,974.70	16,423.33	742,031.59
73006	Everett	82,440.92	0.72	109,856.26	25,572.58	217,870.48
73007	Port Angeles	81,322.42	51.93	48,058.18	18,865.78	148,298.31
73008	Port Townsend	406.30		2,090.72	990.04	3,487.06
73009	Sumas	10,763,369.45	99.59	646,622.11	11,242.25	11,421,333.40
73010	Anacortes	849,514.87	1.22	233,505.67	32,971.00	1,120,993.64
73011	Nighthawk	43.90		30.00		73.90
73012	Danville, WA	20,407.15	8.39	7,535.70	420.87	28,372.19
73013	Ferry, WA	1,258.64	2.00	16,781.64		18,042.28
73014	Friday Harbor	77,838.61		-10,954.98	21,541.58	88,425.21
73015	Boundary, WA	215.19		130.00		345.19
73016	Laurier	29,495.64		46,539.58	1,760.57	77,803.79
73017	Point Roberts, WA	17,432.71	2.04	8,590.80	7,806.41	33,831.96
73018	Kenmore Air Harbor					
73019	Oroville, WA	433,494.66	2,661,566.70	114,173.37	5,604.41	3,214,919.22
7320	Frontier, WA	169,977.66		45,496.55	1,750.00	217,224.21

(cont'd) SPOKANE

73022	Spokane	119,208.17		7,691.00	2.24	126,902.21
73023	Lyden, WA	792,993.99	33.02	49,839.00	512.22	843,379.11
73025	Metaline Falls, WA	266,109.70	50.46	10,441.60	1,010.13	277,619.97
Olympia						
73027	Neah Bay					
73029	Seattle-Tacoma Apt	17,615,308.91	1,529.63	808,060.48	114,596.66	18,539,495.60
DISTRICT	30 SEATTLE	345,944,224.50	9,061,5[illegible].13	14,620,563.12	1,656,021.42	371,282,390.25

Puget Sound is new name for Seattle District

73101	Juneau	5,106.50	1,774.90	-10,000.60	19,359.25	15,519.97
73102	Ketchikan	80,320.97	1,317.09	29,685.62	34,152.96	145,476.64
73103	Skagway	9,415.40	2,998.30	10,550.21	5,154.30	28,118.29
73104	Alcan	61,716.03	0.50	6,453.60	9,352.51	77,522.90
73105	Wrangell	86.73		3,771.87	2,359.56	6,218.16
73106	Dalton Cache, AK	2,411.94	1,097.57	-704.12	956.58	3,761.97
73107	Valdez	1,762,407.14		16,414.16	104,941.71	1,883,763.01
73111	Fairbanks	39,666.30	16.70	2,062.33	624.60	42,370.21

REVENUES - FY 1988 6 MONTHS YTD

		1	2	3		5
PORTS	DISTRICTS	Customs Duty	Excise Taxes	User Fees	OTHER RECEIPTS	TOTAL COLLECTIONS
73112	Petersburg					
73115	Sitka	5,240.62	33.14	3,134.50	-3,395.60	5,012.66
73124	Pelican					
73125	San Point					
73126	Anchorage	2,942,226.62	8,154.15	209,968.50	103,700.63	3,264,049.90
73127	Kodiak					
DISTRICT	31 ANCHORAGE	4,908,678.33	15,392.71	270,536.07	277,206.50	5,471,813.61
73201	Honolulu, HI	22,337,354.91	1,599,009.15	1,153,738.42	451,315.20	25,541,417.68
73202	Hilo, HI	18,417.25	44.80	5,525.75	1,133.49	25,121.29
73203	Kahului, HI	71,295.26		9,608.39	2,048.14	82,951.79
73204	Nawiliwili/Port Alln	808.68		982.91		1,791.59
73205	Honolulu Itl Apt	1,379,135.67	6,646.06	388.09	447,108.71	1,833,278.53
DISTRICT	32 HONOLULU	23,807,011.77	1,605,700.01	1,170,243.56	901,605.54	27,484,560.88
	REGION TOTAL	923,403,953.31	37,260,418.96	39,551,304.12	4,934,954.06	1,005,240,831.25
SERVICEWIDE		5,490,743,963.47	383,963,223.26	215,655,009.33	21,526,347.73	5,297,242,297.41
* Other locations		374,545.00	1,586,271	48,743,621	1,870,563	52,570,990.00
Total		5,491,118,508.47	385,549,494.26	264,398,630.33	23,396,910.73	6,349,813,287.41

SOURCE: U.S. Customs Service

II. U.S. Customs Service Data and Statistics (by Port)

C. Drawback Entries

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PORTLAND, ME	135	338	1,086.51	176	518	1,069.98
BANGOR, ME						
EASTPORT, ME						
JACKMAN, ME	10	136	543.46	4	116	646.44
VANCEBORO, ME						
HOULTON, ME	4	147	1,945.56			
FORT FAIRFIELD, ME				1	101	198.57
VAN BUREN, ME	1	135	173.25	30	97	674.88
MADAWASKA, ME	1	201	81.63			
FORT KENT, ME						
BATH, ME						
BAR HARBOR, ME	1					
CALAIS, ME	11	154	272.70			
LIMESTONE, ME						
ROCKLAND, ME						
JONESPORT, ME						
BRIDGEWATER, ME	1	165	0.00			
PORTSMOUTH, NH	7	130	3,656.82			
BELFAST, ME						
SEARSPORT, ME						
LEBANON AIRPORT						
*DISTRICT TOTAL , PORTLAND	171	301	1,029.51	211	424	967.63
ST. ALBANS, VT	461	225	624.49	143	133	568.58
RICHFORD, VT						
BEECHER FALLS, VT						
BURLINGTON, VT	1	185	153.62	1	67	433.12
DERBY LINE, VT	5	79	56.43	4	78	118.50
NORTON, VT				1		
HIGHGATE SPRINGS/ALBURG	7	212	195.62		97	717.71
NORTHEAST REGION						
*DISTRICT TOTAL , ST ALBANS	474	223	612.34	149	131	567.60
BOSTON ABI						
BOSTON, MA	1,651	480	5,722.53	614	710	11,078.87
SPRINGFIELD, MA	1					
WORCESTER,MA						
GLOUCESTER, MA	2	46	2,123.82		57	1,201.60
NEW BEDFORD, MA	2	89	2,746.54	2		
PLYMOUTH, MA						
FALL RIVER, MA						

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SALEM, MA						
PROVINCETOWN, MA						
BRIDGEPORT, CONNECTICUT	1	23	1,089.03	1		
HARTFORD. CONNECTICUT	71	174	961.99	46	167	1,111.48
NEW HAVEN, CONNECTICUT	7	228	591.84	1		
NEW LONDON, CONNECTICUT						
LAWRENCE, MA						
LOGAN AIRPORT, MA	229	172	718.55	49	260	1,082.41
BOSTON-CARTAGE CONTROL						
*DISTRICT TOTAL, BOSTON	1,964	449	5,222.77	713	640	9,606.03
NEWPORT, RI						
PROVIDENCE, RI	416	344	813.12	56	275	1,265.63
MELLVILLE, RI						
*DISTRICT TOTAL, PROVIDENCE	416	344	813.12	56	275	1,265.63
BRIDGEPORT, CT						
HARTFORD, CT	41	1,165	2,768.65		1,258	1,657.28
NEW HAVEN, CT						
NEW LONDON, CT						
*DISTRICT TOTAL	41	1,165	2,768.65		1,258	1,657.28
OGDENSBURG, NY						
MASSENA, NY						
FORT COVINGTON, NY						
CAPE VINCENT, NY						
ALEXANDRIA BAY, NY	10	175	604.75		107	188.48
CHATEAUGAY, NY						
CHAMPLAIN-ROUSES POINT	973	332	1,738.49	359	227	1,272.37
CLAYTON, NY						
TROUT RIVER, NY						
CHAMPLAIN-CARTAGE CONT						
*DISTRICT TOTAL, OGDENSBURG	983	331	1,729.73	359	225	1,260.69
BUFFALO-NIAGARA FALLS NY	1,811	337	5,759.24	580	434	5,352.26
ROCHESTER, NY				3		
OSWEGO, NY	2	92	37,432.77	2	161	736.31
SODUS POINT, NY						
SYRACUSE, NY	1					

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UTICA, NY						
NORTHEAST REGION						
*DISTRICT TOTAL, BUFFALO	1,814	337	5,786.57	585	433	5,344.82
PHILADELPHIA, PA	612	173	6,439.94	182	240	3,763.45
CHESTER, PA				1		
WILMINGTON, DE	1	354	1,448.67	1	239	9,072.86
PITTSBURGH,PA	96	136	1,088.74	58	123	1,370.51
PAULSBORO						
WILKES-BARRE/SCRANTON PA	1	221	5,914.74			
CAMDEN, NEW JERSEY						
PHILA. INTL. AIRPORT						
HARRISBURG, PA	13	152	414.71	4	214	647.38
GLOUCESTER CITY						
MARCUS HOOK						
ALLENTOWN, PENNSYLVANIA	3	47	1,032.34			
ALLENTOWN-BETHLEHEM						
*DISTRICT TOTAL, PHILADELPHIA	726	168	5,681.69	246	221	3,480.40
ANNAPOLIS, MD						
CAMBRIDGE, MD						
BALTIMORE, MD	1,274	191	4,707.73	313	238	3,798.96
CRISFIELD						
*DISTRICT TOTAL, BALTIMORE	1,274	191	4,707.73	313	238	3,798.96
NORTHEAST REGION						
MONTREAL QUEBEC CANADA						
TORONTO ONTARIO CANADA						
*DISTRICT TOTAL						
**REGION TOTAL	7,863	331	4,160.75	2,632	406	4,970.58

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	NUMBER OF DRAWBACK ENTRIES	AVERAGE DAYS PROCESSING TIME	AVERAGE AMOUNT PAID	NUMBER OF DRAWBACK ENTRIES	AVERAGE DAYS PROCESSING TIME	AVERAGE AMOUNT PAI
NEW YORK, NY	20,017	335	2,721.14	7,169	262	3,721.63
ALBANY, NY	1					
NEWARK						
PERTH AMBOY						
JOHN F KENNEDY AIRPORT	1					
*DISTRICT TOTAL	20,019	335	2,721.14	7,169	262	3,721.63
NEWARK, NJ	475	125	2,343.20	432	188	2,621.64
PERTH AMBOY, NJ	3	98	178.16			
*DISTRICT TOTAL, NEWARK	478	124	2,266.79	432	188	2,621.64
JOHN F KENNEDY AIRPORT	178	123	763.02	73	184	1,630.66
JOHN F KENNEDY AIRPORT						
BERMUDA, BAHAMA ISLANDS						
*DISTRICT TOTAL, JFK	178	123	763.02	73	184	1,630.66
NEW YORK REGION						
BERMUDA, BAHAMA ISLANDS						
*DISTRICT TOTAL						
FORMS DISTRIBUTION CENTR						
*DISTRICT TOTAL						
**REGION TOTAL	20,675	333	2,707.72	7,674	259	3,671.89

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RAYMOND, MT	4			2	178	111.69
EASTPORT, ID	5			1	353	189.76
SALT LAKE CITY UT	76	282	221.62	17	336	397.56
GREAT FALLS,MT	1			1	193	100.27
BUTTE, MT						
TURNER, MT						
DENVER, CO	243	216	808.59	79	274	676.01
PORTHILL, ID						
SCOBY,MT						
SWEETGRASS, MT	78	181	653.53	17	175	1,386.26
WHITETAIL, MT						
PIEGAN, MT						
OPHEIM, MT	1	169	66.97			
ROOSVILLE, MT	2	204	156.07			
MORGAN,MT						
WHITLASH, MT						
DEL BONITA, MT						
VANCOUVER CANADA						
CALGARY CANADA						
EDMONTON, ALBERTA CANADA						
OPHEIM, MT						
NATRONA COUNTY INT AP						
*DISTRICT TOTAL , GREAT FALLS	410	216	671.04	117	271	702.45
PEMBINA, ND	296	235	405.44	105	217	585.97
NOYES, MN	7	174	216.97	15	141	1,922.35
PORTAL, ND	17	202	382.82	11	198	991.20
NECHE, ND	4				140	1,590.71
ST JOHN, ND						
NORTHGATE, ND						
WALHALLA, ND						
HANNAH, ND						
SARLES, ND						
AMBROSE, ND						
FARGO, NORTH DAKOTA						
ANTLER, ND						
SHERWOOD, ND						
HANSBORO, ND						
MAIDA, ND						
FORTUNA, ND						
WESTHOPE, ND						
NOONAN, ND						

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	NUMBER OF DRAWBACK ENTRIES	AVERAGE DAYS PROCESSING TIME	AVERAGE AMOUNT PAID	NUMBER OF DRAWBACK ENTRIES	AVERAGE DAYS PROCESSING TIME	AVERAGE AMOUNT PAI.
CARRURY, ND						
DUNSEITH, ND						
WARROAD, ND	1	281	55.53			
BAUDETTE, MN						
PINECREEK, MN						
ROSEAU, MN	4	129	0.00	30	118	296.8
WINNIPEG INTL AIRPORT						
HECTOR INTER AIRPORT						
PEMBINA CARTAGE CONTROL						
*DISTRICT TOTAL, PEMBINA	329	229	387.99	161	204	768.0
MINNEAPOLIS-ST. PAUL, MN	799	151	3,669.52	337	190	6,703.4
*DISTRICT TOTAL, MINNEAPOLIS	799	151	3,669.52	337	190	6,703.47
DULUTH, MN	8	115	2,285.91	15		
ASHLAND, WI						
INTERNATIONAL FALLS, MN	18	270	533.31	4	368	1,206.70
SUPERIOR, WI						
GRAND PORTAGE, MN	1					
SILVER BAY, CANADA						
*DISTRICT TOTAL, DULUTH	27	214	1,170.62	19	368	1,206.70
MILWAUKEE, WI	498	192	2,489.16	75	341	4,087.13
MARINETTE, WI						
GREEN BAY, WI	24			2	184	142.32
MANITOWOC, WI						
SHEBOYGAN, WI						
RACINE, WI	5	298	2,520.69	2	368	52.33
*DISTRICT TOTAL, MILWAUKEE	519	193	2,489.56	79	334	3,858.18
DETROIT, MI	2,466	236	5,896.43	626	211	1,654.15
PORT HURON, MI	124	243	346.46	34	242	637.78
SAULT STE MARIE, MI	92	67	382.82	46	57	503.85
SAGINAW/BAY CITY, MI						
BATTLE CREEK, MI	149	393	4,309.33			
GRAND RAPIDS, MI	41	195	264.87		84	2,081.04
ESCANABA, CANADA						
MARQUETTE, CANADA						
ALGONAC, CANADA						

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MUSKEGAN, MI						
GRAND HAVEN,CANADA						
ROGERS CITY,MN						
DETOUR,MN						
MACKINAC ISLE,MN						
SOUTH HAVEN						
PRESQUE ISLE,MN						
ALPENA,MN						
FERRYSBURG,MN						
*DISTRICT TOTAL , DETROIT	2.872	— 241	5.215.69	706	286	1.517.02
CHICAGO, IL	2.838	333	7.417.82	1.117	350	10.095.56
PEORIA, IL					1.551	248.816.15
OMAHA, NE	1	259	7.701.79			
EAST CHICAGO,IN						
GARY,IN						
OHARE INTL AIRPORT						
DES MOINES, IO	38	136	659.01			
DAVENPORT-ROCK ISLAND						
*DISTRICT TOTAL , CHICAGO	2.877	329	7.275.86	1.117	351	10.315.76
CLEVELAND, OH	272	189	4.012.71	107	255	12.133.44
CINCINNATTI, OH	641	246	744.61	73	266	1.101.87
COLUMBUS, OH	27	296	749.60	17	425	6.426.14
DAYTON, OH	12	461	3.892.54	4	222	7.019.14
TOLEDO, OH	31	166	2.028.47	20	204	1.198.24
ERIE, PA	40	183	8.330.85	2	491	3,655.68
SANDUSKY, OH						
CLEVELAND,OHIO						
CONNEAUT, OH						
INDIANAPOLIS, IN	135	615	125.331.79	55	431	30.448.59
FAIRPORT,OH						
AKRON, OH	21	230	6.924.20		307	6.049.54
EVANSVILLE, IN						
LAWRENCEBURG, IN						
LOUISVILLE, KY	110	455	56.947.75	30	273	1,702.12
OWENSBORO, KY	5	135	1.600.23	1	525	2,954.61
HURON,OH						
LORAIN,OH						
ASHTABULA, OH	4	282	225.36	2	472	380.50
AIRBORNE AIR PARK						

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RICKENBACKER AIRPORT						
FORT WAYNE AIRPORT						
EMERY COURIER	1			2		
UPS COURIER				72	87	308.92
DHL COURIER						
*DISTRICT TOTAL, CLEVELAND	1,299	276	15,200.05	385	291	9,618.62
KANSAS CITY, MO	262	128	1,206.66	105	116	5,440.39
ST JOSEPH, MO						
ST LOUIS,MO.	345	577	4,664.72	134	669	3,804.13
WICHITA,KANSAS	88	98	584.73	32	227	1,071.60
SPRINGFIELD,MO	50	142	9,907.87	10	256	13,936.00
*DISTRICT TOTAL, ST LOUIS	745	329	3,053.73	281	517	4,363.52
NORTH CENTRAL REGION						
VANCOUVER B.C. PRECLEAR						
CALGARY ALBERTA PRECLEAR						
EDMONTON,ALBERTA PRECLEA						
MONTREAL, CANADA						
TORONTO, CANADA						
WINNEPEG CANADA PRECLEAR						
*DISTRICT TOTAL						
**REGION TOTAL	9,877	268	6,432.38	3,202	301	6,011.16

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NORFOLK, VA	384	258	4,247.44	65	384	1,852.0
NEWPORT NEWS, VA	2	163	210.36			
NORFOLK SUBPORT						
RICHMOND-PETERSBURG, VA	50	192	793.15	36	457	1,540.9
CAPE CHARLES, VA						
REEDVILLE, VA						
HOPEWELL VA						
CHARLESTON, WV	5	299	327.41		478	453.6
*DISTRICT TOTAL , NORFOLK	361	246	3,371.91	101	342	1,765.0
WILMINGTON, NC	145	274	27,107.12	78	677	13,214.6
WINSTON-SALEM, NC	69	729	2,671.66	19	1,100	285.83
DURHAM, NC	84	240	3,533.59	18	147	1,762.71
REIDSVILLE, NC						
BEAUFORT-MOREHEAD CTY.NC						
CHARLOTTE, NC	199	366	550.98	37	262	1,508.18
WILMINGTON CARTAGE CONT						
*DISTRICT TOTAL, WILMINGTON	497	330	10,219.53	144	402	4,598.49
CHARLESTON, SC	342	265	2,461.80	117	429	3,755.25
GEORGETOWN, SC						
GREENVILLE-SPARTANBRG SC	28	207	17,822.15	6	433	39,696.86
COLUMBIA, SC	10	103	659.80	6	190	2,151.68
*DISTRICT TOTAL , CHARLESTON	380	260	3,524.60	129	418	7,024.20
BRUNSWICK, GA	1	183	442.88			
SAVANNAH, GA	367	498	13,754.32	132	361	3,388.40
ATLANTA, GA	643	152	1,594.50	263	169	1,898.28
*DISTRICT TOTAL , SAVANNAH	1,011	292	6,494.25	335	207	2,196.30
TAMPA, FL	202	236	40,840.48	84	58	1,388.70
JACKSONVILLE, FL	83	175	2,169.19	16	94	2,116.21
FERNANDINA BEACH, FL						
CARRABELLE, FL						
BOCA GRANDE, FL						
ORLANDO, FL	24	187	3,630.25	16	59	1,541.11
ST. PETERSBURG, FL	5	29	2,155.13			
PORT CANAVERAL						
APALACHICOLA, FL						

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AUTOMATED COMMERCIAL SYSTEM
DRAWBACK PROCESSING

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PORT NAME	10/86 - 09/87			10/87 - 03/88		
	NUMBER OF DRAWBACK ENTRIES	AVERAGE DAYS PROCESSING TIME	AVERAGE AMOUNT PAID	NUMBER OF DRAWBACK ENTRIES	AVERAGE DAYS PROCESSING TIME	AVERAGE AMOUNT PAI
PANAMA CITY, FL						
PENSACOLA, FL	1	58	5,851.25			
PORT ST. JOE, FL						
PORT MANATEE, FLA						
SOUTHWEST FLORIDA						
TAMPA CARTAGE CONTROL						
*DISTRICT TOTAL, Tampa	315	206	23,923.92	116	56	1,485.1
AGUADILLA, PR						
FAJARDO, PR						
GUANICA, PR						
HUMACAO, PR						
MAYAGUEZ, PR						
PONCE, PR	10	164	684.48			
SAN JUAN, PR	262	355	6,279.82	109	971	7,759.34
JOBOS, PR						
GUAYANILLA, PUERTO RICO						
SAN JUAN INTL AIRPRT, PR	7	106	2,183.62	4		
*DISTRICT TOTAL, San Juan	279	344	5,966.62	113	971	7,759.34
CHARLOTTE AMALIE, VI						
CRUZ BAY, VI						
CORAL BAY, VI						
CHRISTIANSTED, VI						
FREDERIKSTED, VI						
*DISTRICT TOTAL, Virgin Islands						
MIAMI, FL	1,385	288	4,888.11	397	236	2,126.23
KEY WEST, FL						
PORT EVERGLADES, FL	26	359	2,620.80	12	102	524.14
WEST PALM BEACH, FL	19	437	1,192.42	18	812	0.00
FORT PIERCE, FLORIDA						
MIAMI INTL AIRPORT	47	115	1,028.46	49	184	544.66
ST CROIX, VI						
CHARLOTTE AMALIE, VI						
FREEPORT, BAHAMA ISLANDS						
NASSAU, BAHAMA ISLANDS						
*DISTRICT TOTAL, Miami	1,397	281	4,717.72	432	236	1,987.22

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PORT NAME	10/86 - 09/87 NUMBER OF DRAWBACK ENTRIES	AVERAGE DAYS PROCESSING TIME	AVERAGE AMOUNT PAID	10/87 - 03/88 NUMBER OF DRAWBACK ENTRIES	AVERAGE DAYS PROCESSING TIME	AVERAGE AMOUNT PAI
WASHINGTON, DC	101	146	2,120.37	15	168	934.5
ALEXANDRIA, VA	5					
*DISTRICT TOTAL, WASH. D.C.	106	146	2,120.37	15	168	934.5
SOUTHEAST REGION						
BERMUDA, BAHAMAS ISLANDS						
FREEPORT, BAHAMA ISLANDS						
NASSAU, BAHAMA ISLANDS						
*DISTRICT TOTAL						
**REGION TOTAL	4,346	281	7,113.74	1,385	378	3,789.7

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UNITED STATES CUSTOMS SERVICE
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DRAWBACK PROCESSING

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PORT NAME	10/86 - 09/87 NUMBER OF DRAWBACK ENTRIES	10/86 - 09/87 AVERAGE DAYS PROCESSING TIME	10/86 - 09/87 AVERAGE AMOUNT PAID	10/87 - 03/88 NUMBER OF DRAWBACK ENTRIES	10/87 - 03/88 AVERAGE DAYS PROCESSING TIME	10/87 - 03/88 AVERAGE AMOUNT PAI
MOBILE, AL	79	532	2,763.61	152	467	8,979.4
GULFPORT,MS	5	368	1,266.66	1	837	0.0
PASCAGOULA,MS						
BIRMINGHAM, AL	188	342	74.65	34	230	2,775.9
APALACHICOLA, FL						
CARRABELLE, FL						
PANAMA CITY, FL						
PENSACOLA, FL						
PORT ST. JOE, FL						
HUNTSVILLE, AL						
*DISTRICT TOTAL , MOBILE	272	363	399.63	187	394	6,754.0
MORGAN CITY, LA						
NEW ORLEANS, LA	700	703	24,315.50	311	567	37,072.4
LITTLE ROCK, AR	16	1,150	1,089.33		230	4.1
BATON ROUGE,LA	2	241	11,464.56		889	5,940.5
PORT SULPHUR, LA						
MEMPHIS, TN	26	635	8,299.34	17	752	2,120.7
NASHVILLE, TN	30	606	2,147.91	13	843	1,602.3
CHATTANOOGA, TN	43	669	20,051.70	2	408	24,352.6
DESTREHAN,LA						
GRAMERCY,LA	145	884	86,551.11	12		
GREENVILLE, MISS						
AVONDALE,LA						
ST. ROSE,LA						
GOOD HOPE,LA						
VICKSBURG,MISS						
KNOXVILLE, TN	5	582	1,092.87	1	508	1,529.6
LAKE CHARLES LA						
SHREVESPORT-BOSIER CITY		310	1,718.27			
FEDERAL EXPRESS COURIER						
NASHVILLE,TN CARTAGE-CON						
MEMPHIS, TN CARTAGE-CNTL						
NEW ORLEANS CARTAGE-CNTL						
*DISTRICT TOTAL , NEW ORLEANS	967	742	36,595.86	356	568	32,420.2
SOUTH CENTRAL REGION				13		
*DISTRICT TOTAL				13		
**REGION TOTAL	1,239	667	29,401.86	556	524	25,918.14

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UNITED STATES CUSTOMS SERVICE
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DRAWBACK PROCESSING

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PORT NAME	10/86 - 09/87 NUMBER OF DRAWBACK ENTRIES	10/86 - 09/87 AVERAGE DAYS PROCESSING TIME	10/86 - 09/87 AVERAGE AMOUNT PAID	10/87 - 03/88 NUMBER OF DRAWBACK ENTRIES	10/87 - 03/88 AVERAGE DAYS PROCESSING TIME	10/87 - 03/88 AVERAGE AMOUNT PAI
PORT ARTHUR, TX	2	268	87,820.24			
SABINE, TX						
ORANGE, TX						
BEAUMONT, TX						
LAKE CHARLES, LA	1	1,437	2,677.42	2		
*DISTRICT TOTAL , PORT ARTHUR	3	658	59,439.30	2		
GALVESTON, TX						
FREEPORT, TX						
CORPUS CHRISTI, TX						
LAVACA, TX						
*DISTRICT TOTAL						
BROWNSVILLE, TX	55	237	812.01			
DEL RIO, TX	3	261	336.28	106		
EAGLE PASS, TX	36	61	4,308.38			
LAREDO, TX	405	84	1,137.11		101	3,622.3
HIDALGO, TX	146	300	30,706.67	217	158	2,738.2
GRANDE CITY, TX				31	270	0.0
SAN ANTONIO, TX	61	209	493.79			
PROGRESSO, TX				22		
ROMA, TX	6	178	192.11	1		
MIDLAND INTER AIRPORT					413	82.2
BROWNSVILLE-CARTAGE CTL.						
DEL RIO-CARTAGE CONTROL						
EAGLE PASS-CARTAGE CTL.						
SAN ANTONIO-CARTAGE CTL.						
ROMA-CARTAGE CONTROL						
HIDALGO CARTAGE CONTROL						
LAREDO CARTAGE CONTROL						
*DISTRICT TOTAL , LAREDO	712	121	3,594.53	377	168	2,485.90
EL PASO DISTRICT						
EL PASO, TX	62	391	1,094.87	14	226	1,603.29
PRESIDIO, TX				2		
FABENS, TX						
COLUMBUS, NM						
ALBUQUERQUE, NM	6	352	826.42			
SANTA TERESA AIRPORT						
EL PASO CARTAGE CONTROL						
*DISTRICT TOTAL , EL PASO	68	386	1,056.89	16	226	1,603.29

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DRAWBACK PROCESSING

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PORT NAME	10/86 - 09/87			10/87 - 03/88		
	NUMBER OF DRAWBACK ENTRIES	AVERAGE DAYS PROCESSING TIME	AVERAGE AMOUNT PAID	NUMBER OF DRAWBACK ENTRIES	AVERAGE DAYS PROCESSING TIME	AVERAGE AMOUNT PAID
DOUGLAS, AZ	1	100	234.64	1	85	179.86
LUKEVILLE, AZ						
NACO, AZ						
NOGALES, AZ	116	50	1,018.23	78	27	1,332.67
PHOENIX, AZ	49	496	5,535.12	7	355	3,916.25
SASABE, AZ						
SAN LUIS, AZ						
NOGALES CARTAGE CONTROL						
*DISTRICT TOTAL , NOGALES	166	183	2,359.13	86	79	1,708.94
HOUSTON, TX	2,443	291	9,493.46	582	213	13,541.71
DALLAS, TX						
FT. WORTH, TX						
OKLAHOMA CITY, OK	1					
TULSA, OK						
TEXAS CITY,TEXAS						
AMARILLO, TX						
LUBBOCK, TX						
HOUSTON INTERCONTL	75	248	744.57	1	548	0.00
GALVESTON, TX				4		
FREEPORT, TX						
CORPUS CHRISTI, TX	4					
LAVACA, TX						
*DISTRICT TOTAL , HOUSTON	2,523	289	9,087.03	587	214	13,487.76
DALLAS/FT. WORTH, TX	264	405	3,628.30	105	396	939.98
AMARILLO,TEXAS	4	291	1,205.05		303	319.14
LUBBOCK,TX	4				265	205.83
OKLAHOMA CITY, OK	4					
TULSA, OK	19	167	904.08	12	121	2,465.65
AUSTIN, TX	26	288	362.16	13	363	825.50
*DISTRICT TOTAL , DALLAS	321	390	3,430.45	130	370	929.64
SOUTHWEST REGION						
*DISTRICT TOTAL						
**REGION TOTAL	3,793	274	7,350.08	1,198	217	8,041.60

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UNITED STATES CUSTOMS SERVICE
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PORT NAME	10/86 - 09/87 NUMBER OF DRAWBACK ENTRIES	AVERAGE DAYS PROCESSING TIME	AVERAGE AMOUNT PAID	10/87 - 03/88 NUMBER OF DRAWBACK ENTRIES	AVERAGE DAYS PROCESSING TIME	AVERAGE AMOUNT PAI
SAN DIEGO, CA	100	212	2,686.95	22	1,210	3,189.1
ANDRADE, CA						
CALEXICO, CA	5	398	1,994.51		1,018	0.0
OTAY MESA, CA.	99	157	668.26	11	639	416.9
TECATE, CA	16	497	860.82	9	85	1,755.0
*DISTRICT TOTAL , SAN DIEGO	220	223	1,671.78	42	716	1,047.1
LOS ANGELES, CA	3,017	377	3,165.59	1,199	392	2,236.1
PORT SAN LUIS HARBOR, CA						
LONG BEACH,CA	1	272	2,110.96			
SEGUNDO,CA						
VENTURA,CA						
PORT HUENEME, CA						
CAPITAN,CA						
MORROW,CA						
LOS ANGELES INT ARPT	1,269	332	1,218.54	668	397	2,079.41
LAS VEGAS, NV	45	365	2,475.75		505	1,375.36
*DISTRICT TOTAL , LOS ANGELES	4,332	362	2,517.79	1,867	394	2,175.94
SAN FRANCISCO INTL AIRPT	587	175	6,570.86	146	109	3,362.66
EUREKA, CA						
FRESNO, CA						
MONTEREY,CA						
SAN FRANCISCO, CA	4,958	288	13,727.16	1,744	352	6,461.36
STOCKTON,CA						
OAKLAND,CA						
RICHMOND,CA						
ALAMEDA,CA						
CROCKETT,CA						
SACRAMENTO,CA						
MARTINEZ,CA						
REDWOOD CITY,CA						
SELBY,CA						
SAN JOAQUIN RIVER,CA						
SAN PABLO BAY,CA						
CARQUINEZ STRAIT,CA						
SUISUN BAY,CA						
RENO, NV	1	94	22,883.08			
*DISTRICT TOTAL , SAN FRANCICO	5,546	273	12,790.98	1,890	328	6,160.25

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PORT NAME	10/86 - 09/87			10/87 - 03/88		
	NUMBER OF DRAWBACK ENTRIES	AVERAGE DAYS PROCESSING TIME	AVERAGE AMOUNT PAID	NUMBER OF DRAWBACK ENTRIES	AVERAGE DAYS PROCESSING TIME	AVERAGE AMOUNT PAID
ASTORIA, OR						
NEWPORT, OR						
COOS BAY, OR						
PORTLAND, OR	139	132	1,142.93	48	141	2,513.48
LONGVIEW, WA	83	157	2,139.70	1	297	2,527.60
BOISE, IDAHO	6	96	2,389.14	1	240	1,842.82
VANCOUVER, WA						
KALAMA, WA						
FEDERAL EXPRESS COURIER						
*DISTRICT TOTAL , PORTLAND	228	143	1,665.60	50	155	2,465.40
SEATTLE, WA	844	262	1,130.57	157	308	1,772.31
TACOMA, WA	58	156	31,683.64	17	123	4,655.78
ABERDEEN, WA						
BLAINE, WA	495	87	401.29	223	118	581.54
BELLINGHAM, WA	1			1		
EVERETT, WA						
PORT ANGELES, WA						
PORT TOWNSEND, WA						
SUMAS, WA	12	89	641.67	9	286	703.97
ANACORTES, WA				1		
NIGHTHAWK, WA						
DANVILLE, WA						
FERRY, WA						
FRIDAY HARBOR, WA						
BOUNDARY, WA						
LAURIER, WA						
POINT ROBERTS, WA						
KENMORE AIR HARBOR, WA						
OROVILLE, WA	9	198	1,060.62	1	56	99.70
FRONTIER, WA				1		
SOUTH BEND-RAYMOND WASH						
SPOKANE, WA				1	65	238.89
LYNDEN, WA	4	226	116.81	2		
METALINE FALLS						
OLYMPLIA, WA	1					
NEAH BAY, WA						
SEATTLE-TACOMA INTL ARPT	108	156	830.36	22	124	681.38
PORT OF PUGET SOUND						
*DISTRICT TOTAL , SEATTLE	1,532	186	2,080.42	435	181	1,003.83

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UNITED STATES C..TOMS SERVICE
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DRAWBACK PROCESSING

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PORT NAME	10/86 - 09/87 NUMBER OF DRAWBACK ENTRIES	AVERAGE DAYS PROCESSING TIME	AVERAGE AMOUNT PAID	10/87 - 03/88 NUMBER OF DRAWBACK ENTRIES	AVERAGE DAYS PROCESSING TIME	AVERAGE AMOUNT PAI
JUNEAU, AK						
KETCHIKAN, AK						
SKAGWAY, AK						
ALCAN,AK						
WRANGELL, AK					2.606	2,580.4
DALTON CACHE, AK						
VALDEZ, AK						
FAIRBANKS, AK						
PETERSBURG, AK						
SITKA						
PELICAN, AK						
SAND POINT, AK						
ANCHORAGE, AK						
KODIAK, AK	48	141	15.66	24	188	391.8
*DISTRICT TOTAL , ANCHORAGE	48	141	15.66	24	241	439.4
HONOLULU, HI	62	107	1,437.50	23	74	816.5
HILO, HI						
KAHULUI, HI						
NAWILIWILI-PORT ALLEN,HI						
HONOLULU INTL AIRPRT	4	60	90.95	8	62	4,644.1
*DISTRICT TOTAL , HONOLULU	66	105	1,388.54	31	71	1,727.8
PACIFIC REGION						
PACIFIC REGION						
PACIFIC REGION						
*DISTRICT TOTAL						
CALGARY, ALBERTA						
*DISTRICT TOTAL						
**REGION TOTAL	11,972	291	6,759.37	4,339	341	4,067.06
***GRAND TOTAL	59,765	314	5,463.99	20,986	317	4,900.54

SOURCE: U.S. Customs Service

II. U.S. Customs Service Data and Statistics (by Port)

D. Cargo Examinations

EXAMINATIONS - FY 1987

PORTS	DISTRICTS	1 Central Exam Sta CES's	2 Intensive Exams	3 TAILGATE EXAMS Total	3 TAILGATE EXAMS at CES's	4 De-Van (Strip) Total	4 De-Van (Strip) at CES's	5 NOT TAILGATE NOT DE-VAN Total	5 NOT TAILGATE NOT DE-VAN At CES	6 Discrep Rate (Percent)	7 INTENSIVE EXAMS Average Cost	8 INTENSIVE EXAMS Avg Delay (Hrs/Days)
10101	Portland, Me.		12,285									
10102	Bangor, Me.		8,814			104						
10103	Eastport, Me.		353									
10104	Jackman, Me.		30,020									
10105	Vanceboro, Me.		918									
10106	Houlton, Me.		41,921									
10107	Fort Fairfield, Me.		12,176									
10108	Van Buren, Me.		12,142									
10109	Madawaska, Me.		7,237									
10110	Ft. Kent, Me.		5,146									
10111	Bath											
10112	Bar Harbor, Me.		16,341									
10115	Calais, Me.		83,710									
10118	Limestone, Me.		8,203									
10122	Jonesport											
7	Bridgewater, Me.		3,372									
1	Portsmouth, NH		3,736			161						
10132	Belfast, Me.		88									
10152	Searsport											
10181	Lebanon Airport											
DISTRICT 1 PORTLAND			260,542			265						
10201	St. Albans, Vt.											
10203	Richard, Vt.		12,353									
10206	Beecher Falls		22,958									
10707	Burlington, Vt.		10,719									
10209	Derby Line, Vt.		72,398									
10211	Norton, Vt.		31,896									
10212	Highgate/Alburg		146,699									
DISTRICT 2. ST. ALBANS			307,023									
10401	Boston, Ma.		85,995			432						
10402	Springfield, Ma.		44,562			27						
10403	Worcester, Ma.		1,524									
10404	Gloucester, Ma.		5,447			133						

(cont'd) NORTHEAST

PORTS	DISTRICTS	1 Central Exam Sta CES's	2 Intensive Exams	3 TAILGATE EXAMS Total	3 TAILGATE EXAMS at CES's	4 De-Van (Strip) Total	4 De-Van (Strip) at CES's	5 NOT TAILGATE NOT DE-VAN Total	5 NOT TAILGATE NOT DE-VAN At CES	6 Discrep Rate (Percent)	7 INTENSIVE EXAMS Average Cost	8 INTENSIVE EXAMS Avg Delay (Hrs/Days)
10405	New Bedford, Ma.		2,978			8						
10406	Plymouth, Ma.		46									
10407	Fall River, Ma.		78									
10408	Salem, Ma.		239									
10	Bridgeport, CT		6,402			[illegible]						
11	Hartford, CT		24,877			46						
10412	New Haven, CT		5,138									
10413	New London, CT		467									
10416	Lawrence, Ma.		289			[illegible]						
10417	Logan Airport											
DISTRICT 4 BOSTON			180,120			[illegible]						
10301	Newport. RI		287									

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PORTS	DISTRICTS	1 Central Exam Sta CES's	2 Intensive Exams	3 TAILGATE EXAMS Total	at CES's	4 De-Van (Strip) Total	at CES's	5 NOT TAILGATE NOT DE-VAN Total	At CES	6 Discrep Rate (Percent)	7 INTENSIVE EXAMS Average Cost	8 Avg Delay (Hrs/Days)
502	Providence, RI		8,497									
503	Melville											
DISTRICT 5 PROVIDENCE			8,497			2						
10701	Ogdensburg, NY		34,540									
10704	Massena, NY		23,837									
10705	Fort Covington											
10706	Vincent, NY											
10708	Alexandria Bay		48,759									
10711	Chateaugay											
10712	Champlain/Rouses		141,043									
10714	Clayton, NY											
10715	Trout River, NY		23,175									
DISTRICT 7 OGDENSBURG			285,382									
10901	Buffalo/Niagra F		432,301			12						
10903	Rochester, NY		24,908			448						
10904	Oswego, NY		44									
10905	Sodus Point											
10906	Syracuse, NY		6,010									
10907	Utica, Ny											
DISTRICT 9 BUFFALO 0			463,263			460						
(Cont'd) NORTHEAST												
11101	Philadaphia, PA		23,015			1137						
11102	Chester, PA		503			10						
11103	Wilmington, DE		14,126									
11104	Pittsburg, PA		6,336			21						
105	Paulsboro, NJ											
11106	Wilkes-Barre/Scraton		470									
11107	Camden, NJ											
11109	Harrisburg, PA		1,164			2						
11113	Gloucester City, NJ											
11118	Marcus Hook											
11119	Allentown, PA											
11181	Allentwn-Bethlhm Apt		490									
DISTRICT 11 PHILADELPHIA			46,146			1170						
11301	Annapolis											
11302	Cambridge, MD											
11303	Baltimore, MD		30,314			2307						
11304	Crisfield											
DISTRICT 13 BALTIMORE			30,314			2307						
	REGION TOTAL		1,447,987			3989						
	NEW YORK											
21001	New York Seaport		310,341			2192						
21002	Albany, NY		4,713			23						
			315,054			2215						
24601	Newark		442,475			4499						

PORTS	DISTRICTS	1 Central Exam Sta CES's	2 Intensive Exams	3 TAILGATE EXAMS Total	of CES's	4 Partial (Strip) Total	of CES's	5 NOT TAILGATE NOT RE-LDD Total	At CES	6 Discrep Rate (Percent)	7 INTENSIVE EXAMS Average Cost	8 Avg Delay (Hrs/Days)
4602	Perth Amboy, NJ		3,305									
DISTRICT	46 NEWARK		440,840			6079						
4701	JFK Airport		1,090,281									
DISTRICT	47 JFK AIRPORT		1,090,281									
	REGION TOTAL		1,833,313			8714						
8												
	NORTH CENTRAL											
3301	Raymond, MT		10,250									
3302	Eastport, Idaho		28,021									
3303	Salt Lake City, UT		16,096			1						
3304	Great Falls, MT		3,440			1						
3305	Butte, MT		313									
3306	Turner, MT		484									
3307	Denver		14,042			8						
3308	Porthill, Id.		4,440									
3309	Scobey, MT		344									
3310	Sweetgrass, MT		48,480									
3312	Whitetail, MT		38									
3316	Piegan, MT		1,281									
3317	Opheim, MT		402									
3318	Roosville, MT		28,463									
3319	Morgan, MT		130									
3321	Whitlash		134									
3322	Del Bonita, MT		2,079									
	[illegible] County Apt											
DISTRICT	33 GREAT FALLS		140,280			10						
3401	Pembina, ND		110,040									
3402	Noyes, MN		87,405									
3403	Portal, ND		74,214									
3404	Neche, ND		10,705									
3405	St. John, ND		1,281									
3406	Northgate, ND		1,780									
3407	Walhalla, ND		6,487									
3408	Hannah, ND		376									
3409	Sarles, ND		710									
3410	Ambrose, ND		587									
3411	Hector, Apt, Fargo		140									
3413	Antler, ND		480									
3414	Sherwood, ND		404									
3415	Hansboro, ND		308									
8												
3416	Maida, ND		1,570									
3417	Fortuna, ND		1,740									
3419	Westhope, ND		2,375									
3420	Noonan, ND		2,104									
3421	Carbury, ND		460									
3422	Dunseith, ND		17,807									
3423	Warroad, MN		6,866									

EXAMINATIONS - FY 1987

PORTS	DISTRICTS	1 Control Exam Sta CES's	2 Intensive Exams	3 TAILGATE EXAMS Total	 at CES's	4 De-Van (Strip) Total	 at CES's	5 NOT TAILGATE NOT DE-VAN Total	 At CES	6 Discrep Rate (Percent)	7 INTENSIVE EXAMS Average Cost	8 Avg Del (Hrs/Day
3424	Baudette, MN		1,401									
3425	Pinecreek, MN		515									
3426	Roseau, MN		4,790									
3481	Rector Intl Apt											
DISTRICT	34 PEMBINA		338,842									
3501	Minneapolis/St. Paul		12,949									
DISTRICT	35 MINNEAPOLIS		12,949									
3601	Duluth MN/Superior		7,322			0						
3602	Ashland, WI											
3604	Intl Falls/Rainier		126,232									
3608	Superior, WI											
3613	Portage, MN		16,242									
3614	Silver Bay											
DISTRICT	36 DULUTH		149,796			0						
3701	Milwaukee, WI		11,227			167						
3702	Marinette, WI		3									
3703	Green Bay, WI		443									
3706	Manitowoc, WI											
3707	Sheboygan, WI		31									
3708	Racine, WI		294									
DISTRICT	37 MILWAUKEE		11,998			167						
8												
(cont'd)	NORTH CENTRAL											
3801	Detroit, MI		1,112,227			373						
3802	Port Huron, MI		415,032									
3803	Sault Ste Marie		40,218									
3804	Saginaw-Bay Cty/Flint		1,402			77						
3805	Battle Creek, MI		3,110			286						
3806	Grand Rapids, MI		4,032			1						
3808	Escanaba											
3809	Marquette											
3814	Algonac											
3815	Muskegon, MI		298			5						
3816	Grand Haven											
3818	Rogers City											
3819	Detour											
3820	Mackinac Island											
3842	Presque Isle											
3843	Alpena											
3844	Ferrysburg											
DISTRICT	38 DETROIT		1,579,979			742						
3901	Chicago, Ill.		287,148			1628						
3902	Peoria, Ill.		1,396			127						
3903	Omaha, Neb.		6,385			2						
3904	East Chicago, IN											
3905	Gary, IN					[illegible]						
3906	O'Hare Intl Apt											
3907	Des Moines, Iowa		3,077			1						

EXAMINATIONS - FY 1987

PORTS	DISTRICTS	1 Central Exam Sta CES's	2 Intensive Exams	3 TAILGATE EXAMS Total	at CES's	4 De-Van (Strip) Total	at CES's	5 NOT TAILGATE NOT DE-VAN Total	At CES	6 Discrep Rate (Percent)	7 INTENSIVE EXAMS Average Cost	8 Avg Del (Hrs/Day
33908	Davenport		700			10						
DISTRICT 39 CHICAGO			349,677			1140						
34101	Cleveland, OH		31,013			140						
34102	Cincinnati/Lwrnchg,		74,538			18						
34103	Columbus, OH		13,324			14						
34104	Dayton, OH		19,756			6						
34105	Toledo-Sandusky, OH		6,122			42						
8												
34106	Erie, PA		1,229			37						
34108	Ashtabula											
345109	Conneaut											
34110	Indianapolis, Ind.		10,284			58						
34112	Akron, OH		4,156			302						
34112	Evansville, Ind.											
34115	Louisville, KY		195,940			66						
34116	Owensboro-Evansville		285									
34117	Huron											
34121	Lorain											
34122	Ashtabula/Conneaut, OH		63									
34181	Airborne Air Park											
34182	Rickenbacker Apt											
34195	Emery World-Wide											
34196	UPS, Louisville, KY											
34197	DHL, Cincinnati											
DISTRICT 41 CLEVELAND			375,254			775						
34501	Kansas City, MO		7,307			110						
34503	St. Louis, MO		3,038			38						
34504	Wichita, KS		2,975			4						
34505	Springfield, MO		3,246			6						
DISTRICT 45 ST. LOUIS			16,630			178						
37922	Vancouver Precl											
37923	Calgary Precl											
37924	Edmonton Precl											
37925	Montreal Precl											
37926	Toronto Precl											
37928	Winnepeg Precl											
DISTRICT 79 PRECL												
	REGION TOTAL		3,016,313			3087						
	SOUTHEAST											
41401	Norfolk/Newpt News, V		34,321			2972						
41402	Newport News, VA											
41404	Richmond/Ptrsburg		5,880			[illegible]						
41406	Cape Charles, VA											
41407	Reedville, VA											
41408	Hopewell											
41409	Charleston, WV		[illegible]									
DISTRICT 14 NORFOLK			[illegible]			[illegible]						

EXAMINATIONS - FY 1987

PORTS	DISTRICTS	1 Central Exam Sta CES's	Intensive Exams	2	3 TAILGATE EXAMS Total	at CES's	4 De-Van (Strip) Total	at CES's	5 NOT TAILGATE NOT DE-VAN Total	At CES	6 [illegible] Rate (Percent)	7 INTENSIVE EXAMS Average Cost	8 Avg Del (Hrs/Da
41501	Wilmington, NC		5,101				732						
416502	Winston Salem, NC		13,142				11						
41503	Durham, NC		5,430				23						
41504	Reidsville UC, NC												
41511	Beaufort/Mrhd Cty		409				25						
41512	Charlotte, NC		4,449				28						
DISTRICT 15 WILMINGTON			28,629				839						
41601	Charleston		58,549				2309						
41602	Georgetown, SC		225										
Greville/Sprtnbrg, SC			7,178				454						
41604	Columbia, SC		4,152				123						
DISTRICT 16 CHARLESTON			70,104				2886						
41701	Brunswick, GA		1,327				213						
41703	Savannah		23,229				1962						
41704	Atlana, GA		15,227				571						
DISTRICT 17 SAVANNAH			39,783				2746						
41801	TAMPA		9,482				1271						
41802	Jacksonville		22,880				3993						
41805	Fernandina Beach		394				379						
41806	Carrabelle												
41807	Boca Grande, Fl		793										
41808	Orlando, FL		8,481				3						
41814	St. Petersburg		911				94						
8							49						
(cont'd) SOUTHEAST)													
41816	Port Canaveral		22,043				42						
41817	Apalachicola												
41818	Panama City, FL		93				3						
41819	Pensacola, FL		515				105						
41820	Port St. Joe, FL												
41881	SW Fl Reg Apt, Ft. Meyers												
DISTRICT 18 TAMPA			65,882										
							3979						
44901	Aguadilla, Pr		242										
44904	Fajardo, Pr		425										
44905	Guanica												
44906	Humacao												
44907	Mayaguez, GA		1,196				20						
44908	Ponce, Pr		1,443										
44909	San Juan		48,487				5720						
44911	Jobos												
44912	Guayanilla												
44913	San Juan Intl Apt												
DISTRICT 49 SAN JUAN, PR			51,793				5746						
4501	Chrlte Aml St. Thos		47,041				[illegible]						
45102	Cruz Bay, St. John		957										
45103	Coral Bay, St. John												
45104	Chrstnstd, St. Crx		4,870				865						
45105	Fredrikstad, St. Crx												

EXAMINATIONS - FY 1987

PORTS	DISTRICTS	1 Central Exam Sta CES's	2 Intensive Exams	3 TAILGATE EXAMS Total	at CES's	4 De-Van (Strip) Total	at CES's	5 NOT TAILGATE NOT DE-VAN Total	At CES	6 Discrep Rate (Percent)	7 INTENSIVE EXAMS Average Cost	8 Avg Del (Hrs/Day
DISTRICT 51 VIRGIN ISLS.*			34,810			446						
*51 includes Preclearance data from St. Thomas and St. Croix												
45201	Miami		114,228			4143						
45202	Key West FL		113									
45203	Port Everglades		12,264			3724						
45204	West Palm Beach		13,180			2764						
45205	Fort Pierce											
45206	Miami Intl Airport		-									
DISTRICT 52 MIAMI			139,787			10575						
8												
(cont'd) SOUTHEAST												
45401	Washington, D.C.		24,521			1						
45402	Alexandria, VA		739									
DISTRICT 54 WASHINGTON, D.C.			25,260			1						
47421	Bermuda Precl											
47422	Freeport Precl											
47423	Nassau Precl											
DISTRICT 74 PRECL												
	REGION TOTAL		310,570			31985						
	SOUTH CENTRAL											
31901	Mobile, AL		3,930			477						
31902	Gulfport, MS		336			97						
31903	Pascagoula, MS		1,369			136						
31904	Birmingham, AL		6,683			43						
31910	Huntsville, AL		6,682			457						
DISTRICT 19 MOBILE			19,190			1400						
32001	Morgan City, LA		1,140			105						
32002	New Orleans, LA		82,476			4038						
32003	Little Rock, AR		2,390			389						
32004	Baton Rouge, LA		3,109									
32005	Port Sulphur											
32006	Memphis, TN		39,256			88						
32007	Nashville, TN		18,244			786						
32008	Chattanooga, TN		1,372									
32009	Destrehan											
32010	Gramercy, LA		738			146						
32011	Greenville, MS		1									
32012	Avondale											
32013	St. Rose											
32014	Good Hope											
32015	Vicksburg, MS		161									
8												
(cont'd) SOUTH CENTRAL												
32016	Knoxville, TN		5,260			9						
32017	Lake Charles, LA		6,667			1107						
32018	Shrevpt/Bossier					187						
32093	Fed Expr, Memphis											

EXAMINATIONS - FY 1987

PORTS	DISTRICTS	1 Central Exam Sta CES's	2 Intensive Exams	3 TAILGATE EXAMS Total	at CES's	4 De-Van (Strip) Total	at CES's	5 NOT TAILGATE NOT DE-VAN Total	At CES	6 Discrep Rate (Percent)	7 INTENSIVE EXAMS Average Cost	8 Avg Delay (Hrs/Days)
DISTRICT	20 NEW ORLEANS		132,849			4042						
	REGION TOTAL		172,039			8042						
	SOUTHWEST											
62101	BEAUMONT/ORANGE/PT. ARTHUR/SABI		1,497			882						
62102	SABINE											
62103	ORANGE											
DISTRICT	21 PORT ATHUR		1,497			882						
623101	Brownsville/Camron Co		119,437									
62302	Del Rio, TX		35,845									
62303	Eagle Pass, TX		48,737			48						
62304	Laredo, TX		349,458			478						
62305	Hidalgo, TX		144,628									
62307	Rio Grande City		4,275									
62308	San Antonio, TX		19,231			88						
62309	Progreso, TX		21,394									
62310	Roma, TX		3,409									
62382	Midland Apt											
DISTRICT	23 LAREDO		757,834			614						
402	El Paso, TX		237,376									
403	Presidio, TX		5,955									
62404	Fabens, TX		401									
62406	Columbus, NM		9,866									
62407	Albuquerque, NM		7,430			52						
62481	Santa Teresa Apt											
DISTRICT 8	24 EL PASO		260,236			52						
(cont'd)	SOUTHWEST											
62601	Douglas, AZ		33,582									
62602	Lukeville, AZ		539									
62603	Naco, AZ		9,333									
Nogales, AZ			146,728									
62605	Phoenix, AZ		40,126			73						
62606	Sasabe, AZ		493									
62608	San Luis, AZ		21,128									
DISTRICT	26 NOGALES		251,846			73						
65301	Houston/Galveston					4462						
65306	Texas City											
65309	Houston Intcontl		37,831									
65310	Galveston, TX		1,481			786						
65311	Freeport, TX		583			38						
65312	Corpus Christi		4,086			164						
65313	Port Lavca/Pt Comft		98									
DISTRICT	53 HOUSTON		64,779			5062						
65501	Dallas/Ft. Worth		12,036			1266						
65502	Amarillo, TX		297			58						
503	Lubbock, TX		486									
504	Oklahoma City, OK		5,284			48						

EXAMINATIONS - FY 1987

PORTS	DISTRICTS	1 Central Exam Sta CES's	2 Intensive Exams	3 TAILGATE EXAMS Total	at CES's	4 De-Van (Strip) Total	at CES's	5 NOT TAILGATE NOT DE-VAN Total	At CES	6 Discrep Rate (Percent)	7 INTENSIVE EXAMS Average Cost	8 Avg Delay (Hrs/Days)
43303	Tulsa, OK		9,882			194						
43304	Austin, TX		9,776			181						
DISTRICT	55 DALLAS-FT. WORTH		38,401			1716						
	REGION TOTAL		1,374,811			8701						
	PACIFIC											
72501	San Diego		176,548			53						
72502	Andrade, CA		1,609									
72503	Calexico, CA		43,305									
72504	San Ysidro											
72505	Tecate, CA		11,332									
DISTRICT	25 SAN DIEGO		233,146			53						
0												
72704	Los Angls/Long bch		191,612			9082						
72707	Pt. San Luis Obispo		714			200						
72709	Long Beach											
72711	El Segundo											
72712	Ventura											
72713	Port Hueneme											
72715	Capitan											
9	Morro											
20	Los Angeles Intl Apt											
72722	Las Vegas, NV		4,153			15						
DISTRICT	27 LOS ANGELES		196,479			9325						
72801	San Fran Intl Apt											
72802	Eureka		37									
72803	Fresno, CA		2,717			33						
72805	Monterey											
72809	San Fran/Oakland		281,470			192						
72810	Stockton											
72811	Oakland											
72812	Richmond											
72813	Alameda											
72815	Crockett											
72816	Sacramento											
72820	Martinez											
72821	Redwood City											
72827	Selby											
72828	San Joaquin River											
72829	San Pablo Bay											
72830	Carquinez Strait											
72831	Suisun Bay											
72833	Reno, NV		1,687			1						
DISTRICT	28 SAN FRANCISCO		285,911			226						
0												
	(cont'd) PACIFIC											
01	Astoria											
02	Newport, OR		57									

EXAMINATIONS - FY 1987

PORTS	DISTRICTS	1 Central Exam Sta CES's	2 Intensive Exams	3 TAILGATE EXAMS Total	at CES's	4 De-Van (Strip) Total	at CES's	5 NOT TAILGATE NOT DE-VAN Total	At CES	6 Discrep Rate (Percent)	7 INTENSIVE EXAMS Average Cost	8 Avg Da (Hrs/Da
72903	Coos Bay		112									
72904	Portland											
72905	Longview, WA											
72907	Boise, ID											
72908	Vancouver, WA											
72910	Columbia River/Astoria/Longview		23,491			189						
DISTRICT	29 PORTLAND, OR.		23,640			189						
Columbia Snake River is the new name for Portland District.												
73001	Puget Snd/Seattle		119,291			567						
73002	Tacoma											
73003	Aberdeen, WA		16									
73004	Blaine, WA		132,045									
73005	Bellingham											
73006	Everett											
73007	Port Angeles											
73008	Port Townsend											
73009	Sumas		17,731									
73010	Anacortes											
73011	Nighthawk		130									
73012	Danville, WA		2,423									
73013	Ferry, WA		1,718									
73014	Friday Harbor											
73015	Boundary, WA		95									
73016	Laurier		7,416									
73017	Point Roberts, WA		4,091									
73018	Kenmore Air Harbor											
73019	Oroville, WA		39,343									
7320 0	Frontier, WA		2,151									
(cont'd)	SPOKANE											
73022	Spokane		1,356			6						
73023	Lynden, WA		14,116									
73025	Metaline Falls, WA		2,030									
Olympia												
73027	Neah Bay											
73029	Seattle-Tacoma Apt											
DISTRICT	30 SEATTLE		325,206			573						
Puget Sound is new name for Seattle District												
73101	Juneau		113									
73102	Ketchikan		367			8						
73103	Skagway		1,167			100						
73104	Alcan		308									
73105	Wrangell											
73106	Dalton Cache, AK		486									
73107	Valdez		33									
73111	Fairbanks		[illegible]									
73112	Petersburg		[illegible]									
73113	Sitka		[illegible]									

PORTS	DISTRICTS	1 Central Exam Sta CES's	2 Intensive Exams	3 TAILGATE EXAMS Total	at CES's	4 De-Van (Strip) Total	at CES's	5 NOT TAILGATE NOT DE-VAN Total	At CES	6 Discrep Rate (Percent)	7 INTENSIVE EXAMS Average Cost	8 Avg Delay (Hrs/Days)
73124	Pelican											
73125	Sand Point											
73126	Anchorage		13,387									
73127	Kodiak											
DISTRICT 31 ANCHORAGE			14,439			189						
73201	Honolulu, HI		97,386			1215						
73202	Hilo, HI		519			21						
73203	Kahului, HI		499			41						
73204	Nawiliwili/Port Alln		5			5						
73205	Honolulu Itl Apt											
DISTRICT 32 HONOLULU			98,409			1282						
	REGION TOTAL		1,179,394			11857						
SERVICEWIDE			9,702,371			77703						

SOURCE: U.S. Customs Service

II. U.S. Customs Service Data and Statistics (by Port)

E. Cargo Seizures

NUMBER OF GENERAL MERCHANDISE SEIZURES BY PORT* BY VIOLATION
FY 88 THROUGH MARCH 88

NORTHEAST REGION:

	Portland Maine	Calais Maine	Portland District	Richford Vermont	Beecher Falls Vermont
19USC1497	-	1	1	1	-
18USC545	-	-	-	-	-
19USC1594	-	-	-	-	-
22USC401	-	-	-	-	-
19USC1459	-	-	-	-	2
19USC1526	-	-	-	-	-
17USC602B	-	-	-	-	-
15USC1124	-	-	-	-	-
19USC1595a/a(c)	1	-	1	-	-
19USC1592	-	-	-	-	-
19USC1433/1436	-	-	-	-	-
22USC2778	-	-	-	-	-
Other	-	-	-	-	-
TOTALS	1	1	2	1	2

	Derby Line Vermont	Norton Vermont	Highgate Sps. Vermont	St. Albans District
19USC1497	11	1	25	38
18USC545	-	-	3	3
19USC1594	-	-	-	-
22USC401	-	-	1	1
19USC1459	3	2	6	13
19USC1526	-	-	-	-
17USC602B	-	-	-	-
15USC1124	-	-	-	-
19USC1595a/a(c)	1	-	1	2
19USC1592	-	-	-	-
19USC1433/1436	-	-	1	1
22USC2778	-	-	-	-
Other	-	1	3	4
TOTALS	15	4	40	62

*Only those ports with violations are reflected herein.

NORTHEAST REGION (CONTINUED):

	Boston Mass.	Bridgeport Conn.	Hartford Conn.	Logan Airport	Boston District
19USC1497	-	-	-	40	40
18USC545	-	-	-	1	1
19USC1594	-	-	-	-	-
22USC401	2	-	1	24	27
19USC1459	-	-	-	-	-
19USC1526	-	-	-	-	-
17USC602B	-	-	-	-	-
15USC1124	-	-	-	-	-
19USC1595a/a(c)	25	1	-	21	47
19USC1592	-	-	-	-	-
19USC1433/1436	-	-	-	-	-
22USC2778	-	-	-	-	-
Other	3	-	1	1	5
TOTALS	30	1	2	87	120

	Providence** RI District	Ogdensburg** NY District	Buffalo** NY District	Philadelphia Pennsylvania
19USC1497	1	77	32	12
18USC545	-	-	7	11
19USC1594	-	-	-	-
22USC401	-	21	2	5
19USC1459	-	1	3	-
19USC1526	-	-	-	1
17USC602B	-	-	1	-
15USC1124	-	1	-	-
19USC1595a/a(c)	-	203	31	6
19USC1592	-	9	3	-
19USC1433/1436	-	20	27	-
22USC2778	-	-	-	-
Other	-	23	17	1
TOTALS	1	353	123	36

**This port (District Headquarters) was the only port to have violations; therefore, this is a port/district total.

NORTHEAST REGION (CONTINUED):

	Wilmington Delaware	Philadelphia District	Baltimore** District	REGION TOTALS
19USC1497	-	12	6	207
18USC545	-	11	-	22
19USC1594	-	-	-	-
22USC401	-	5	6	62
19USC1459	-	-	-	17
19USC1526	-	1	3	4
17USC602B	-	-	-	1
15USC1124	-	-	2	3
19USC1595a/a(c)	-	6	107	397
19USC1592	-	-	2	14
19USC1433/1436	-	-	-	48
22USC2778	-	-	-	-
Other	1	2	-	52
TOTALS	1	37	126	827

**This port (District Headquarters) was the only port to have violations; therefore, this is a port/district total.

NEW YORK REGION:

	New York Seaport	Perth Amboy	N.Y.S. Area	Newark Area**	JFK Area**	NEW YORK REGION
19USC1497	1	-	1	3	425	429
18USC545	-	-	-	-	482	482
19USC1594	-	-	-	-	-	-
22USC401	3	-	3	6	65	74
19USC1459	-	-	-	-	-	-
19USC1526	-	-	-	9	522	531
17USC602B	-	-	-	-	-	-
15USC1124	-	-	-	-	-	-
19USC1595a/a(c)	24	2	26	101	70	197
19USC1592	-	-	-	-	4	4
19USC1433/1436	-	-	-	-	-	-
22USC2778	-	-	-	-	-	-
Other	1	-	1	-	-	1
TOTALS	29	2	31	119	1568	1718

**This port (District Headquarters) was the only port to have violations; therefore this is a port/district total.

NORTH CENTRAL REGION:

	Eastport Idaho	Salt Lake City, UT	Great Falls, MT	Denver CO	Sweetgrass Montana
19USC1497	-	3	1	2	6
18USC545	-	-	-	2	-
19USC1594	-	-	-	-	-
22USC401	-	-	-	16	-
19USC1459	-	-	-	-	1
19USC1526	-	-	-	-	-
17USC602B	-	-	-	-	-
15USC1124	-	-	-	-	-
19USC1595a/a(c)	1	2	5	-	2
19USC1592	-	-	-	-	-
19USC1433/1436	-	-	-	-	-
22USC2778	-	-	-	-	-
Other	-	-	-	-	-
TOTALS	1	5	6	20	9

	Whitlash Montana	Del Bonita Montana	Great Falls District
19USC1497	1	1	14
18USC545	-	-	2
19USC1594	-	-	-
22USC401	-	-	16
19USC1459	-	-	1
19USC1526	-	-	-
17USC602B	-	-	-
15USC1124	-	-	-
19USC1595a/a(c)	-	-	10
19USC1592	-	-	-
19USC1433/1436	-	-	-
22USC2778	-	-	-
Other	-	-	-
TOTALS	1	1	43

NORTH CENTRAL REGION (CONTINUED):

	Pembina ND	Noyes MN	Portal ND	Walhalla ND	Sarles ND
19USC1497	9	2	-	1	1
18USC545	1	-	-	-	-
19USC1594	-	-	-	-	-
22USC401	-	-	-	-	-
19USC1459	-	1	-	-	-
19USC1526	1	-	-	-	-
17USC602B	-	-	-	-	-
15USC1124	2	-	-	-	-
19USC1595a/a(c)	1	-	-	-	-
19USC1592	1	-	-	-	-
19USC1433/1436	-	-	-	-	-
22USC2778	-	-	-	-	-
Other	-	-	-	-	-
TOTALS	15	3	-	1	1

	Antler ND	Hansboro ND	Fortuna ND	Westhope ND	Dunseith ND
19USC1497	1	1	1	1	2
18USC545	-	-	-	-	-
19USC1594	-	-	-	-	-
22USC401	-	-	-	-	-
19USC1459	-	-	-	-	-
19USC1526	-	-	-	-	-
17USC602B	-	-	-	-	-
15USC1124	-	-	-	-	-
19USC1595a/a(c)	-	-	-	-	-
19USC1592	-	-	-	-	-
19USC1433/1436	-	-	-	-	-
22USC2778	-	-	-	-	-
Other	-	-	-	-	-
TOTALS	1	1	1	1	2

CHICAGO REGION (CONTINUED):

	Warroad ND	Baudette MN	Pembina District	Minneapolis** District	Duluth MN
19USC1497	1	-	20	7	-
18USC545	-	-	1	45	1
19USC1594	-	-	-	-	-
22USC401	-	-	-	4	-
19USC1459	-	-	1	-	-
19USC1526	-	-	1	4	-
17USC602B	-	-	-	-	-
15USC1124	-	-	2	-	-
19USC1595a/a(c)	-	1	2	11	1
19USC1592	-	-	1	-	-
19USC1433/1436	-	-	-	-	-
22USC2778	-	-	-	-	-
Other	-	-	-	-	-
TOTALS	1	1	28	71	2

	International Falls MN	Grand Portage MN	Duluth District	Milwaukee** District
19USC1497	-	1	1	-
18USC545	2	-	3	1
19USC1594	-	-	-	-
22USC401	-	-	-	-
19USC1459	-	1	1	-
19USC1526	-	-	-	-
17USC602B	-	-	-	-
15USC1124	-	-	-	-
19USC1595a/a(c)	-	-	1	1
19USC1592	-	-	-	-
19USC1433/1436	-	-	-	-
22USC2778	-	-	-	-
Other	-	-	-	-
TOTALS	2	2	6	2

**This port (District Headquarters) was the only port to have violations; therefore this is a port/district total.

NORTH CENTRAL REGION (CONTINUED):

	Detroit MI	Port Huron MI	Sault Ste Marie MI	Detroit District	Chicago IL
197USC1497	99	6	-	105	22
18USC545	3	-	-	3	-
19USC1594	-	-	-	-	-
22USC401	3	-	-	3	2
19USC1459	-	-	-	-	-
19USC1526	15	2	-	17	53
17USC602B	-	-		-	-
15USC1124	2	-	-	2	3
19USC1595a/a(c)	8	-	-	8	68
19USC1592	-	-	-	-	-
19USC1433/1436	19	8	1	28	27
22USC2778	-	-	-	-	-
Other	-	-	-	-	-
TOTALS	149	16	1	166	175

	Omaha NE	O'Hare Airport	Des Moines Iowa	Chicago District
19USC1497	-	44	-	66
18USC545	-	-	-	-
19USC1594	-	-	-	-
22USC401	-	44	-	46
19USC1459	-	-	-	-
19USC1526	-	4	-	57
17USC602B	-	-	-	-
15USC1124	-	-	-	3
19USC1595a/a(c)	1	2	1	72
19USC1592	-	17	-	17
19USC1433/1436	-	-	-	27
22USC2778	-	-	-	-
Other	-	-	-	-
TOTALS	1	111	1	288

NORTH CENTRAL REGION (CONTINUED):

	Cleveland OH	Cincinnati OH	Columbus OH	Dayton OH	Indianapolis IN
197USC1497	-	6	-	-	-
18USC545	-	1	-	-	-
19USC1594	-	-	-	-	-
22USC401	-	-	-	-	-
19USC1459	-	-	-	-	-
19USC1526	-	-	-	-	-
17USC602B	-	-	-	-	-
15USC1124	-	-	-	-	-
19USC1595a/a(c)	16	2	5	-	7
19USC1592	-	-	-	1	-
19USC1433/1436	-	-	-	-	-
22USC2778	-	-	-	-	-
Other	-	-	-	-	-
TOTALS	16	9	5	1	7

	Louisville KY	Cleveland District	CHICAGO REGION
19USC1497	-	6	219
18USC545	-	1	56
19USC1594	-	-	-
22USC401	-	-	69
19USC1459	-	-	3
19USC1526	-	-	79
17USC602B	-	-	-
15USC1124	-	-	7
19USC1595a/a(c)	2	32	137
19USC1592	-	1	19
19USC1433/1436	-	-	54
22USC2778	-	-	-
Other	-	-	-
TOTALS	2	40	643

SOUTHEAST REGION:

	Norfolk District **	Charleston District**	Brunswick Georgia	Savannah Georgia	Atlanta Georgia
19USC1497	1	1	-	-	7
18USC545	-	-	-	-	1
19USC1594	-	-	-	-	-
22USC401	-	1	-	-	3
19USC1459	-	-	-	7	-
19USC1526	3	1	-	-	-
17USC602B	-	1	-	-	-
15USC1124	-	-	-	-	1
19USC1595a/a(c)	40	5	1	10	32
19USC1592	-	-	-	-	-
19USC1433/1436	-	-	-	-	-
22USC2778	-	-	-	-	-
Other	-	1	-	-	-
TOTALS	44	10	1	17	44

	Savannah District	Tampa Fl.	Jacksonville Florida	Orlando Florida	St. Petersburg Florida
19USC1497	7	3	1	1	-
18USC545	1	-	-	-	-
19USC1594	-	-	-	-	1
22USC401	10	-	-	-	-
19USC1459	-	-	-	-	-
19USC1526	-	6	-	-	-
17USC602B	-	-	-	-	-
15USC1124	1	-	-	-	-
19USC1595a/a(c)	43	3	1	-	-
19USC1592	-	-	-	-	-
19USC1433/1436	-	-	-	-	-
22USC2778	-	-	-	-	-
Other	-	-	-	-	-
TOTALS	62	12	2	1	1

**This port (District Headquarters) was the only port to have violations; therefore, this is a port/district total.

SOUTHEAST REGION (CONTINUED):

	Pt. Canaveral Florida	Tampa District	Fajardo P.R.	Mayaguez P.R.	Ponce P. R.
19USC1497	2	7	-	5	1
18USC545	-	-	-	-	-
19USC1594	-	1	-	-	-
22USC401	-	-	-	4	-
19USC1459	-	-	-	-	-
19USC1526	-	6	-	-	-
17USC602B	-	-	-	-	-
15USC1124	-	-	-	-	-
19USC1595a/a(c)	2	6	-	1	-
19USC1592	-	-	1	-	-
19USC1433/1436	-	-	-	-	5
22USC2778	-	-	-	-	-
Other	-	-	-	-	-
TOTALS	4	20	1	10	6

	San Juan P.R.	San Juan Airport	San Juan District	Charlotte Amalie Virgin Islands
19USC1497	18	35	59	5
18UC545	-	2	2	-
19UC1594	-	-	-	-
22USC401	3	2	9	-
19USC1459	-	-	-	-
19USC1526	-	2	2	-
17USC602B	-	-	-	-
15USC1124	-	1	1	-
19USC1594a/a(c)	-	12	13	-
19USc1592	-	1	2	31
19USC1433/1436	-	-	5	12
22USC2778	-	-	-	-
Other	-	5	5	-
TOTALS	21	60	98	48

SOUTHEAST REGION (CONTINUED):

	Christiansted V. I.	Virgin Isl. District	Miami Fl.	Pt. Everglades Florida
19USC1497	-	5	-	8
18USC545	-	-	14	9
19USC1594	-	-	-	-
22USC401	-	-	6	2
19USC1459	-	-	-	-
19USC1526	-	-	4	5
17USC602B	-	-	-	-
15USC1124	-	-	-	-
19UC1595a/a(c)	-	-	13	2
19USC1592	21	52	-	-
19USC1433/1436	-	12	-	-
22USC2778	-	-	1	-
Other	-	-	4	2
TOTALS	21	69	42	28

	W. Palm Beach Florida	Ft. Pierce Florida	Miami Airport	Miami District	Dulles District**
19UCS1497	11	-	9	28	7
18USC545	-	-	31	54	-
19USC1594	-	-	-	-	-
22USC401	-	-	6	14	-
19USC1459	-	-	-	-	-
19USC1526	3	1	18	31	11
17USC602B	-	-	19	19	2
15USC1124	-	-	-	-	-
19USC1595a/a(c)	-	-	23	38	-
19USC1592	-	-	2	2	1
19USC1433/1436	-	-	-	-	-
22USC2778	-	-	-	1	-
Other	-	-	1	7	-
TOTALS	14	1	109	194	21

**This port (District Headquaters) was the only port to have violations; therefore, this is a port/district total.

SOUTHEAST REGION (CONTINUED):

	Miami Region
19USC1497	115
18USC545	57
19USC1594	1
22USC401	34
19USC1459	-
19USC1526	54
17USC602B	22
15USC1124	2
19USC1595a/a(c)	145
19USC1592	57
19USC1433/1436	17
22USC2778	1
Other	13
TOTALS	518

SOUTH CENTRAL REGION:

	Mobile Ala.	Gulfport Miss.	Birmingham Alabama	Huntsville Alabama	Mobile District
19USC1497	-	-	-	-	-
18USC545	1	-	-	1	2
19USC1594	-	-	-	-	-
22USC401	-	-	-	-	-
19USC1459	-	-	-	-	-
19USC1526	6	1	-	-	7
17USC602B	-	-	-	-	-
15USC1124	1	-	-	-	1
19USC1595a/a(c)	6	-	1	1	8
19USC1592	-	-	-	-	-
19USC1433/1436	-	-	-	-	-
22USC2778	-	-	-	-	-
Other	-	-	-	-	-
TOTALS	14	1	1	2	18

	New Orleans Louisiana	Little Rock Arkansas	Memphis Tenn.	New Orleans District	New Orleans Region
19USC1497	1	-	2	3	3
18USC545	-	-	2	2	4
19USC1594	-	-	-	-	-
22USC401	-	-	-	-	-
19USC1459	-	-	-	-	-
19USC1526	-	1	-	1	8
17USC602B	-	-	-	-	-
15USC1124	-	-	-	-	1
19USC1595a/a(c)	30	-	1	31	39
19USC1592	2	-	15	17	17
19USC1433/1436	-	-	-	-	-
22USC2778	-	-	-	-	-
Other	1	-	-	1	1
TOTALS	34	1	20	55	73

SOUTHWEST REGION:

	Port Arthur District**	Brownsville Texas	Del Rio Texas	Eagle Pass Texas	Laredo Texas
19USC1497	1	1	451	106	133
18USC545	-	-	-	-	-
19USC1594	-	-	-	-	-
22UC401	-	7	5	5	16
19USC1459	-	-	-	-	-
19USC1526	-	-	-	-	1
17USC602B	-	-	-	-	-
15USC1124	-	-	-	-	-
19USC1595a/a(c)	-	1	-	2	6
19USC1592	-	-	-	-	-
19USC1433/1436	-	-	-	-	9
22USC2778	-	-	-	-	-
Other	-	-	-	-	1
TOTALS	1	9	456	113	166

	Hidalgo Texas	Rio Grande City, TX	San Antonio Texas	Progresso Texas	Roma Texas	Laredo District
19USC1497	-	15	-	115	30	851
18USC545	-	-	-	-	-	-
19USC1594	-	-	-	-	-	-
22USC401	8	-	3	3	11	58
19USC1459	-	-	-	-	-	-
19USC1526	-	-	-	-	-	1
17USC602B	-	-	-	-	-	-
15USC1124	-	-	-	-	-	-
19USC1595a/a(c)	1	-	-	12	-	22
19USC1592	1	-	-	-	-	1
19USC1433/1436	-	-	-	-	-	9
22USC2778	-	-	-	-	-	-
Other	-	5	4	-	-	10
TOTALS	10	20	7	130	41	952

**This port (District Headquarters) was the only port to have violations; therefore, this is a port/district total.

SOUTHWEST REGION (CONTINUED):

	El Paso Texas	Presidio Texas	Fabens Texas	Columbus N.Mexico	Albuquerque New Mexico
19USC1497	39	2	3	4	-
18USC545	3	1	-	-	-
19USC1594	-	-	-	-	-
22USC401	39	-	4	3	-
19USC1459	1	-	-	-	-
19USC1526	2	-	-	-	-
17USC602B	-	-	-	-	-
15USC1124	-	-	-	-	1
19USC1595a/a(c)	2	-	-	1	-
19USC1592	-	-	-	-	-
19USC1433/1436	-	-	-	-	-
22USC2778	-	-	-	-	-
Other	-	-	1	-	-
TOTALS	86	3	8	8	1

	El Paso District	Douglas Ariz.	Lukeville Arizona	Naco Ariz.	Nogales Arizona
19USC1497	48	3	3	-	13
18USC545	4	-	-	-	-
19USC1594	-	-	-	-	-
22USC401	46	5	-	3	11
19USC1459	1	-	-	-	-
19USC1526	2	-	-	-	-
17USC602B	-	-	-	-	-
15USC1124	1	-	-	-	-
19USC1595a/a(c)	3	-	-	-	12
19USC1592	-	-	-	-	4
19USC1433/1436	-	-	-	-	-
22USC2778	-	-	-	-	-
Other	1	-	-	-	-
TOTALS	106	8	3	3	40

SOUTHWEST REGION (CONTINUED):

	Phoenix Arizona	Sansabe Arizona	Nogales District	Houston Texas	Houston Airport
19USC1497	2	1	22	-	14
18USC545	2	-	2	18	-
19USC1594	-	-	-	-	-
22USC401	2	-	21	8	28
19USC1459	-	-	-	-	-
19USC1526	-	-	-	1	7
17USC602B	-	-	-	5	-
15USC1124	-	-	-	1	1
19USC1595a/a(c)	-	-	12	9	3
19USc1592	9	-	13	-	-
19USC1433/1436	-	-	-	-	-
22USC2778	-	-	-	-	-
Other	-	-	-	-	-
TOTALS	15	1	70	42	53

	Houston District	Dallas/Ft.W. Texas	Okla City Oklahoma	Dallas District	Houston Region
19USC1497	14	75	-	75	1000
18USC545	18	5	1	6	30
19USC1594	-	-	-	-	-
22USC401	36	-	-	-	161
19USC1459	-	-	-	-	1
19USC1526	8	3	-	3	14
17USC602B	5	-	-	-	5
15USC1124	2	2	-	2	5
19USC1595a/a(c)	12	29	1	30	79
19USC1592	-	16	-	16	30
19USC1433/1436	-	-	-	-	9
22USC2778	-	-	-	-	-
Other	-	-	-	-	22
TOTALS	95	130	2	132	1356

PACIFIC REGION:

	San Diego Calif.	Andrade Calif.	Calexico Calif.	San Ysidro Calif.	Tecate Calif	San Diego District
19USC1497	9	9	132	89	53	292
18USC545	-	-	-	-	-	-
19USC1594	1	-	-	-	-	1
22USC401	12	3	4	4	-	23
19USC1459	-	-	8	-	-	8
19USC1526	-	-	-	-	-	-
17USC602B	-	-	-	-	-	-
15USC1124	2	-	1	-	-	3
19USC1595a/a(c)	-	-	5	247	13	265
19USC1592	1	-	-	-	-	1
19USC1433/1436	2	-	-	1	-	3
22USC2778	2	-	-	-	-	2
Other	-	-	-	-	-	5
TOTALS	29	12	150	341	71	603

	Los Angeles Seaport	Los Angeles Airport	Los Angeles District	San Francisco District**
19USC1497	11	255	266	77
18USC545	-	19	19	10
9USC1594	-	-	-	-
22USC401	18	57	75	24
19USC1459	-	-	-	-
19USC1526	85	33	118	112
17USC602B	12	13	25	7
15USC1124	-	5	5	235
19USC1595a(c)	72	170	242	67
19USC1592	38	69	107	39
19USC1433/1436	-	-	-	-
22USC2778	-	-	-	-
Other	-	7	7	-
TOTALS	236	628	864	571

**This port (District Headquarters) was the only port to have have; therefore, this is a port/district total.

PACTIFIC REGION (CONTINUED):

	Portland** Oregon	Seattle Wash.	Tacoma Wash.	Blaine Wash.	Sumas Wash.	Laurier Wash.
19USC1497	1	-	-	57	1	1
18USC545	-	-	-	2	-	-
19USC1594	-	-	-	-	-	-
22USC401	-	2	3	13	-	-
19USC1459	-	-	-	-	-	-
19USC1526	1	9	1	-	-	-
17USC602B	-	8	-	-	-	-
15USC1124	6	6	2	-	-	-
19USC1595a(c)	1	44	5	8	-	1
19USC1952	-	-	-	31	3	1
19USC1433/1436	-	-	-	7	-	-
22USC2778	-	-	-	-	-	-
Other	-	-	-	1	-	-
TOTALS	9	69	11	119	4	3

	Oroville Wash.	Metaline Falls Washington	Seattle Airport	Seattle District
19USC1497	1	-	113	173
18USC545	-	-	-	2
19USC1594	-	-	-	-
22USC401	-	1	6	25
19USC1459	-	-	-	-
19USC1526	1	-	109	120
17USC602B	-	-	-	8
15USC1124	-	-	1	9
19USC1595a(c)	2	1	74	135
19USC1592	-	-	36	71
19USC1433/1436	-	-	-	7
22USC2778	-	-	-	-
Other	-	-	-	1
TOTALS	4	2	339	551

**This port (District Headquarters) was the only port to have violations; therefore, this is a port/district total.

PACIFIC REGION (CONTINUED):

	Scagway Alaska	Anchorage Alaska	Anchorage District	Honolulu Hawaii	Kahului Hawaii
19USC1497	-	-	-	2	1
18USC545	-	-	-	24	-
19USC1594	-	-	-	-	-
22USC401	-	1	1	-	-
19USC1459	1	-	1	-	-
19USC1526	-	2	2	1	-
17USC602B	-	-	-	4	-
15USC1124	-	-	-	16	-
19USC1595a/a(c)	-	-	-	11	3
19USC1592	-	-	-	-	-
19USC1433/1436	-	-	-	-	-
22USC2778	-	-	-	71	2
Other	-	-	-	-	-
TOTALS	1	3	4	129	6

	Honolulu Airport	Honolulu District	Pacific Region	Pre-Clear Ports	NATIONAL TOTALS
19USC1497	338	341	1150	299	3422
18USC545	-	24	55	-	706
19USC1594	-	-	1	-	2
22USC401	2	2	150	-	550
19USC1459	-	-	9	-	30
19USC1526	10	11	364	-	1054
17USC602B	2	6	46	-	74
15USC1124	1	17	275	-	293
19USC1595a/A(C)	20	34	744	-	1738
19USC1592	54	54	272	-	413
19USC2433/2436	-	-	10	-	138
22USC2778	-	73	75	-	76
Other	-	-	14	-	103
TOTALS	427	562	3165	299	8599

VIOLATION CITATION DESCRIPTIONS

Citation	Brief description of violation
19USC1497	Failure to declare imported merchandise
18USC545	Import contrary to law
19USC1594	Seizure to secure payment of penalty
22USC401	Export violation
19USC1459	Reporting requirements - individuals
19USC1526	Trademark (TM) violation
17USC602B(601-603)	Copyright violation
15USC1124	TM violation -false country of origin
19USC1595a(c)	Merchandise imported contrary to law
OTHER:	
19USC1305	Importation of immoral articles
19USC1592	Commercial fraud and negligence
18USC2254	Seizure/forfeiture - sexual exploitation of children
19USC14233/1436	Report requirements - conveyances
22USC2778	Arms Control - exporting/importing

SOURCE: U.S. Customs Service

[Submissions for the record follow:]

UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON OVERSIGHT

HEARINGS ON THE COMMERCIAL OPERATIONS OF THE
U.S. CUSTOMS SERVICE

OCTOBER 28, 1988

STATEMENT BY
AIR COURIER CONFERENCE OF AMERICA

The Air Courier Conference of America (ACCA) represents almost all of the Nation's air couriers and air express companies, large and small. ACCA has been following the Subcommittee's hearings with interest, particularly in regard to some of the philosophical and policy issues raised by the customs treatment of express consignments. The purpose of our statement is not to contest specific points made by other witnesses. (Some of our members have already offered their individual views in these areas.) Rather, ACCA's statement is intended to stand back from these immediate concerns and provide the Subcommittee with a broad scale, reasoned explanation of how and why the express industry developed and how and why customs authorities around the world are responding to the development of the industry.

Our hope is that a better understanding of the "big picture" will help the Subcommittee to appreciate that, in the field of express consignments at least, U.S. Customs has displayed an unusual degree of responsible and innovative leadership and that this leadership has not only national but international ramifications that are very important to the future of U.S. international commerce. Moreover, in the ongoing process of reform, neither the world's customs authorities nor the international express industry have been deaf to the concerns of the brokers. On the contrary, both institutions have bent over backwards to ensure that regulatory reforms have responded to objective changes in international commercial practices and not merely changes in the identity of carriers.

Of course, many members of the international transportation community and many customs administrations around the world find it more comfortable, commercially and politically, to stick to traditional ways of doing business. The willingness of the U.S. Customs Service to take the more difficult path of thinking ahead and adapting to the future reflects, in our opinion, the very best traditions of that much misused concept "public service."

I. HISTORICAL DEVELOPMENT OF THE INTERNATIONAL EXPRESS INDUSTRY

The international air courier industry began in the late 1960's and early 1970's as a very small industry. In retrospect, it is clear that the air courier industry arose because traditional methods of transmitting parcels around the world were not well adapted to the emerging needs of modern multinational companies, especially "service" companies such as banks, shipping lines, engineering firms, and trading companies. During this period, these industries underwent revolutionary changes, brought on by the development of modern computers and telecommunications, by the containerization of surface cargo, by the rapid industrialization of the Middle East, and by the evolution of worldwide markets. No doubt traditional cargo distribution and postal systems performed their particular tasks with efficiency and economy. Neither, however, was equipped to provide the very urgent, very tightly coordinated, very particularized transportation services required by the new types of international commercial activity.

This need was filled by the air couriers. Couriers transported documents and small parcels by rapid delivery messenger services from sender to international airport and from destination airport to the addressee. Between international airports, couriers usually transported their shipments as the baggage of an "onboard courier" passenger. At this time, the commercial airlines did not offer a cargo service for very urgent, time-sensitive shipments. Only passengers and their baggage could be checked in at the last minute. Only passengers and their baggage were offloaded immediately upon arrival. Most importantly, only passengers and their baggage were guaranteed to board a specific flight. In order to supply a last minute pickup service, or provide an early morning delivery, or make a tight connection to an onward flight, the courier had no choice but to use airline baggage services to transport time-sensitive shipments.

To an equal or greater degree, customs procedures around the world also mandated reliance on the baggage system. Only passenger baggage was immediately cleared by customs, twenty four hours a day. In some countries, indeed, only passengerbaggage could be promptly cleared at all. "Cargo" would have to await clearance by an "importer," a time consuming legal anachronism for the couriers who were transporting shipments which, like mail, were usually originated by a shipper, not an addressee (hence, the addressee would often be unaware of the particulars of the shipment).

More generally, regulatory barriers created by the customs laws fundamentally shaped the evolution of the international courier industry. Couriers concentrated upon the document business primarily because documents were not subject to customs formalities (if not in law, then in fact). International couriers handled only a relatively few small parcels, and these were often communicative in nature, such as advertising proofs and punched computer cards. The strong emphasis on documents rather than parcels in the international industry contrasted markedly with the opposite commercial evolution pursued by large domestic companies such as Federal Express and United Parcel.

Although international air couriers depended heavily on their innovative use of the airline/customs baggage system, they did not neglect the air cargo system. When airline schedules permitted extra leeway (e.g., when there was a long connection) and when customs facilities were operating as soon as the aircraft arrived, "air couriers" would gladly use aircargo because it was much cheaper than baggage as a method of transportation. By the late 1970's, air cargo was often used for air courier shipments over major international routes.

For the original "air couriers," the distinction between documents and small parcels was far more important than the distinction between onboard courier transportation versus air cargo transportation. In fact, air couriers regularly used air cargo. Couriers would switch from one mode to the other depending upon the availability of quick customs clearance, the details of airline schedules, and other considerations such as price and traffic volume.

The huge success of air courier services for document transmission suggested the existence of a large, unsatisfied demand for a general international express system for parcels -- one that was not burdened by the inflexibilities of the traditional air freight system. The popularity of dedicated national express parcel systems likewise indicated what was missing internationally. As a result, in the 1980's several types of other delivery systems, which had only dabbled in the international arena before, began to adapt their services to compete seriously with the international courier system. The new entrants included the national post offices (express mail), the airlines (e.g., Pan American's World Pak), dedicated national express parcel systems (e.g., Federal Express), and air freight forwarders (e.g., Emery's Overnight Letter). Meanwhile, the "air couriers" also began to explore the express small parcel business more seriously. With these developments, it became more accurate to refer to the industry as the "courier/express" industry, or more simply, the "express" industry.

Today most express traffic still consists of time-senstive documents such a bank documents, shipping documents, and engineering documents. Parcels sent by express tend to be special, non-repetitive shipments that are for the use or review of the addressee rather than for resale. Typical parcels would include various types of printed matter, samples, advertising artwork and films, circuit boards, computer tapes and diskettes, emergency spare parts, etc. International express traffic has been characterized by very dramatic growth. Total gross revenues for the industry have been variously estimated at between $ 2 and 4 billion.

The generally low weight and low value of most express traffic reflects both the historical development of the industry and the practicalities of providing the service. We have already noted the tilt in the customs laws in favor of document traffic. The industry's historical reliance on onboard couriers also served to limit the maximum size per piece to 30 kilograms, the maximum weight for baggage accepted by the airlines without punitive surcharges. These historical patterns have been reinforced by operational considerations. It is very difficult to provide a last minute pickup service or rapid sortation for parcels that weigh more than a person can lift and carry easily. Nonetheless, the profile of traffic is changing as a result of changing market demands and improved solutions to operational difficulties. There is, of course, no theoretical reason why a heavy or valuable shipment might not be just as urgent to a businessman as a lightweight or low value shipment. As express companies improve their physical capabilities, particularly by operating their own aircraft, it may be expected that the ratio of parcels to documents will increase and that larger shipments will be handled with the same ease and speed as time-sensitive small parcels.

Still, it appears likely that the vast majority of express shipments will remain low weight and low value. This has been the experience within the United States, where the express traffic is unconstrained by either customs law or baggage restrictions. In this respect, the express industry is the mirror image of the traditional air cargo industry, which concentrates on relatively heavy shipments while at the same time accommodating some smaller shipments.

II. RESPONSE OF CUSTOMS ADMINISTRATIONS TO THE RISE OF THE EXPRESS INDUSTRY

The international flow of express shipments has become so great that it effectively forms its own category of international traffic, deserving of customs procedures specifically adapted to it. For this type of traffic it is possible to develop rational simplifications in customs formalities that will benefit shipper, addressee, carrier, and customs administrator. Many of the world's customs proceeded to do so, each in different ways.

Customs' first response to the rapid growth of the international express industry was to adapt baggage clearance facilities to the needs of onboard couriers. It was, after all, the original onboard air couriers with whom customs was most familiar (again, due mainly to barriers presented by the customs laws). Pioneering reforms in the methods of clearing onboard courier traffic were accomplished in the early 1980's at London's Heathrow Airport and Amsterdam's Schipol Airport. Intellectually, these reforms were derived from the customs law for baggage, since couriers did, in fact, tender "baggage" to customs.

In the United States, U.S. Customs recognized the special status of courier baggage in Directive 3120-03 (5 Sept. 1985 which noted "the rapid clearance of courier shipments has become very important to the international commerce of the United States." Accordingly, documents (intangibles) were to be cleared in the passenger hall and dutiable merchandise in the cargo shed "as quickly as possible." Where volume indicated, all shipments were to be cleared in a "facility developed or designated by the couriers." This directive led directly to the first specialized courier facilities at JFK and Miami airports in early 1986.

The treatment of onboard courier baggage as "baggage" was -- and still is -- a highly useful and expedient adaptation of traditional customs concepts to the needs of transporting urgent consignments in markets in which the total express traffic is relatively small. In these markets, onboard couriers can meet the needs of society for rapid, uncomplicated transmission of documents and small parcels. In the developed world, however, this expedient adaptation of pre-existing legal categories rapidly reached the end of its usefulness. There is no commercial reason to rely exclusively on onboard couriers (and the original air couriers never did so). Hence, to upgrade baggage procedures only would be to impose artificial constraints on express operations. Indeed, as the volume of express traffic grew and the availability of nighttime aircraft capacity declined, even the original air couriers began to charter aircraft to meet their needs. This trend was greatly accelerated by the entrance into the industry of dedicated national express parcel systems.

Adaptation of customs regulations to accommodate express traffic therefore rapidly spread from the baggage to the cargo rules. Just as courier baggage is not precisely "baggage" in the classic sense, neither is express traffic "cargo" in the traditional sense. As noted, express traffic in truth evolved commercially outside of, and in reaction to, the cargo system. Unlike classical cargo, express traffic often has little intrinsic, commercially realizable value (even valuable circuit boards, for instance, are usually valuable only to the addressee and cannot be sold to others). Most express consignments are "consumed" by the addressee and not imported for resale in quantity. Nor, as pointed out above, is the addressee really an "importer" in the historic sense. Unlike an importer, the addressee of an urgent shipment frequently does not even know the shipment is coming. It is usually, the shipper, not the addressee, who makes the decision to use a express carrier.

The customs response was to apply the cargo rules with varying degrees of formality in different countries. In some European countries, for example, private express consignments were given the benefit of "de minimis" rules developed for postal traffic. In the United States, the concept of "informal entry" for low value express consignments was applied, and then expanded. Regulation 143.29, adopted 22 July 1986, permitted "courier and express air services" to clear low value (less than $1000) consignments based upon a manifest, provided customs forms are completed within ten days of release.

Express traffic handled by the postal system is facilitated by the application of special customs procedures developed for mail, even though express traffic is not truly "mail" in the sense in which that term has always been used. Express mail is a commercial service that a post office offers to businessmen. It is not a government supplied, government secured "pouch" (the original meaning of "mail") service that "binds the Nation together." Within the international postal system, express shipments are handled by largely separate organizations which pick up, transport, and deliver outside the normal mail stream. The French Postal Administration has gone so far as to turn over all express postal shipments to a private law subsidiary, formed in joint venture with a private transport company.

In policy debates around the world, the stretching of traditional customs concepts to meet the needs of express traffic often led to metaphysical riddles such as: Is courier baggage "baggage"? Are air cargo shipments by couriers and airlines "cargo" or some sort of "fast cargo"? Is express mail "mail"? Imagine that an airline, a private courier company, and a post office jointly chartered an cargo aircraft because all faced the same need to provide specialized air transport for similar express services marketed to the same set of customers. What would one call the "stuff" on the airplane? (Such a situation eventually arose in May, when Sabena, the Belgian Post Office, and DHL agreed to share a regular cargo flight to the U.S.).

These riddles proved unanswerable. They arose because, in traditional customs terms, it is significant whether a shipment is transported as passenger baggage, cargo, or mail. In this, traditional customs law reasonably reflected commercial realities that developed long ago. Each of these modes of shipment were distinctly different, and the type of traffic suited to one was rarely suited to another. In the express industry, however, the distinct qualities of these three transportation categories are no longer important. An express shipment might travel as baggage or cargo or mail. But not all baggage or cargo or mail is express traffic. What is important -- and what distinguishes express shipments from ordinary baggage, cargo, and mail -- is the door-to-door service provided for the shipment. Is this shipment so urgent that the shipper is willing to pay for a special pickup within two hours of his call? Is this shipment guaranteed by the carrier to board an aircraft the night of the pickup? Is this shipment especially delivered by the carrier within a few hours of the aircraft's arrival in the destination city? Does the carrier provide very careful, individualized supervision over the transportation of each shipment, so that it can promptly locate, reroute, or recall each shipment as may be ordered by the shipper? These questions describe the sort of urgent, individualized, end-to-end, pickup-to-delivery service which the marketplace demands of express companies and their competitors.

It was precisely to address these conceptual problems that U.S. Commissioner von Raab took the bold and innovative step of calling for a special meeting of customs directors from major countries in February 1986. This group in turn requested the Customs Cooperation Council -- the organization of the world's customs administration -- to institute a special study of the facilitation and enforcement issues presented by the rise of express consignments.

After six months of study, including review of submissions from many customs administrations and international agencies and visits to major express traffic hubs, the CCC's secretariat (drawn from customs administrations around the world) reported:

> The present study shows that air courier, fast parcel, and expedited mail services are, in fact a single special service category.... The Secretariat is of the view that it would be desirable to have special simplified formalities in respects to [Express Consignments], just as there are simplified formalities in respect of Postal traffic.... The existence already of a special Annex in the Kyoto Convention [an international customs treaty] concerning urgent consignments [news media, disaster relief, perishable goods] indicates recognition by the Council that Customs formalities should take into account "the urgency" surrounding special categories of international transactions." [CCC, Document 33.763E, pages 1, 17 (Brussels, 15 January 1987).]

At its annual general meeting in June 1987, CCC responded to this report by recommending to customs administrations "guidelines which could be applied to simplify and harmonize customs formalities in respect to express consignments." After seeing how different customs administrations implement these voluntary guidelines, the CCC intends to reconsider the need for a more detailed and more binding international agreement in respect to consignments.

The draft express consignment regulations announced by U.S. Customs in mid December 1987 responded directly to the guidelines adopted by the CCC. Two months later, the need for the draft regulations were firmly supported by the insights of a McKinsey and Company study, "Developing a Strategic Vision of U.S. Customs' Commercial Operations, which was then in its later stages of completion. In effect, McKinsey reported that the express services were being used increasingly because they meet the needs of modern international commerce.

The guidelines of the CCC and the draft regulations of U.S. Customs are first steps, not final solutions. As the Technical Director of the CCC, George Gotschlich (a former German customs officer), said recently:

> The Council, therefore, is firmly wedded to a policy of searching for new and more effective global solutions to meet the challenges brought about by modern technological developments and their impact on trade and commerce. It is in this

> context that the Council views the express consignments and the need to provide facilitated Customs procedures to the extent which is reasonably possible. [Address to the World Express Conference, London, 7 June 1988].

More broadly, speedy and reliable delivery services fit hand in glove with modern "just in time" logistical concepts. Management consultants are now preaching the gospel that time is the most important element in any value added production process. For Fred Smith, chairman of Federal Express:

> It is becoming obvious to more and more people that the distribution revolution is almost as profound as the computer. In fact, I believe it is the symbiotic relationship between improved information management systems and modern logistics systems which is fueling the continued, remarkable creation of new jobs in the U.S. [Address to the World Express Conference, London, 8 June 1988]

The historical development of international express operations, the ongoing efforts of the Customs Cooperation Council, and the broad scale revolution in logistics, we suggest, lend needed perspective to the serious and thoughtful efforts of U.S. Customs to devise new procedures adapted to characteristics of express traffic. It is absurd to dismiss these regulations, as did one witness before this Subcommittee, as nothing more than "Customs' abdication of its authority with respect to the couriers."

III. THE ISSUE OF DISCRIMINATION

No reasonable man would deny that customs laws and regulations should make reasonable distinctions in the treatment of incoming traffic. Customs laws have long treated baggage differently than cargo, or mail differently than either, despite the fact that the same physical article might be involved in all three instances. Other distinctions are based upon value (informal entry) or urgency (cut flowers). Still other distinctions are based upon the mode and quantity of shipment (sea freight versus air freight), the country of origin, and the reliability of the importer and/or shipper (the selectivity process). To require U.S. Customs to treat every single widget brought in the United States identically would be to stop international commerce in its tracks (or force Customs to give up on widgets entirely).

The international express industry has always and consistently argued that:

> From a commercial standpoint, it makes no difference whether [an express] shipment is handled by an onboard courier, an airline, a freight forwarder, or a post office. International customs laws and practices should reflect this fundamental commercial reality.... All forms of [express] traffic compete with one another, in law and in practice. As a matter of fairness and as a matter of law, they should both be treated identically by Customs [Statement of the International Express Carriers Conference to the Customs Cooperation Council, page 14-15 (September 1986)]

The issue of discrimination, then, comes down not to whether customs should discriminate between types of traffic (of course, it should) or whether Customs should discriminate in favor of certain carriers (of course, it should not), but whether it is in the public interest for Customs to develop regulations that are based upon the recognition that certain articles are transported by means of highly integrated, express end to end services.

The ultimate, objective answer to this question, we submit, lies neither with Customs nor the express carriers, but with the marketplace. Plainly, the marketplace has recognized end to end express services as a important transportation service that is distinctly different from traditional freight and postal service. Any market survey will demonstrate this. This market recognition in no way depends upon differences in customs treatment, for it is reflected in domestic services as international services (if not more so). For customs to fail to respond to this clear judgement of the market would, indeed, be irresponsible and prejudicial to the commercial interests of the United States.

It is interesting and enlightening to realize that a decade ago, U.S. postal law went through a conceptual reform similar to that presented by the draft express regulations. Historically, the U.S. postal monopoly was defined according to whether the article transported was a "letter" or not, that is, according to the nature of the thing carried. When the air couriers emerged, there were endless debates whether a bill of lading or a bank check is or is not a "letter"? The resolution of this issue was suggested in an insightful report in 1977 by a special U.S. Commission on Postal Service:

> The Commission recommends that Congress enact legislation defining the scope of the [postal monopoly]. This legislation should respond to the need of business for expedited delivery of extremely urgent matter .... _[E]exclusions from the [postal monopoly] should be based not merely on the content of the mail, but also in recognition of service requirements_ .... [Report, at 73 (1977) (emphasis added)]

After two years of agonizing public debate, this suggestion was eventually embodied in postal regulations that admit a new legal category, "extremely urgent letters," which are exempt from the monopoly. 39 C.F.R. 320.6. The new category depends upon the end-to-end service provided rather than the nature of the shipment. Today, no one, not even the U.S. Postal Service, would argue that express service and postal service are truly similar, competitive products.

This new conceptual category in postal law was driven by the same force that is impelling the creation of a new conceptual category in the customs law, the changing logic and needs of modern commerce. U.S. Customs, the CCC, and the express industry itself are only messengers. The news is that integrated worldwide markets are developing, driven by continual improvements in technology and management.

In a such a rapidly changing commercial environment, it is inevitable, but unfortunate, that some businesses will adapt better than others. The key is not size, or at least not primarily. Only ten years ago, the largest international express services were fledglings, of no commercial consequence compared to the traditional brokers, carriers, and post offices. The key is alignment with the present and future needs of the marketplace. Whatever the solution may be, it is not for governmental agencies such as Customs to turn a blind eye to reasonable and necessary new categories of trade as they are recognized by commerce itself.

The Air Courier Courier Conference of America supports U.S. Customs' efforts to recognize new commercial categories that respond to the needs of U.S. commerce while ensuring that differences in customs treatment will have no effect on the customer's the choice between suppliers of truly competitive services.

BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON WAYS AND MEANS

OVERSIGHT SUBCOMMITTEE

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Testimony of Stephen A. Alterman

Executive Vice President and Counsel

Air Freight Association

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The Air Freight Association is a nationwide trade organization representing the interests of air cargo companies throughout the United States. Members include all-cargo airlines, air freight forwarders and other members of the business community with interests in the air freight marketplace. Included in our number are many of the largest air express companies with significant importing operations which are dependent on an efficient, up-to-date, United States Customs Service. A list of current Association members is attached hereto as Appendix A. On behalf of our membership, I thank you for the opportunity to present our views with respect to the future of the Customs Service and how the Service can best carry out its important functions.

Before going into the details of Customs Service activity as it affects our member companies, it is important to provide a brief overview of the air express industry itself. Only by understanding the history and requirements of those businesses providing overnight delivery of packages can the current and future needs of the Customs Service be correctly analyzed. To a large degree, today's air express companies are the product of the deregulation of the air cargo industry which took place almost eleven years ago. On November 9, 1978, by P.L. 95-163, Congress removed most federal regulation from the domestic air freight marketplace; this loosening of regulatory constraints, in essence, led to the emergence of today's air express carriers which now provide overnight express service to and from virtually every zip code in the United States and which, over the past several years, have expanded this service to overseas and foreign destinations.

The system which has evolved to meet the needs of the international business community is a function of the unique requirements of those businesses; it is driven, not by the air express companies, but by the real world business practices of importers into the United States. For example, just-in-time (JIT) inventory and logistics networks have changed the nature of physical distribution throughout the world. Originated by Toyota in Japan, JIT has spread over the globe to include businesses worldwide. Under this system, inventories are kept to a bare minimum and businesses absolutely depend on the air express companies to deliver products in a timely manner. An example of this philosophy can be seen in the Journal of Commerce article attached hereto as Appendix B which details the need of the Laura Ashley women's clothing stores to use the modern air freight distribution system. In the international sphere, these facts require that the United States Customs Service be equipped both to fulfill its mandate of monitoring import shipments and collecting appropriate revenues, and to permit air freight companies to conduct their businesses without undue interference or delay. In other words, our industry has evolved over the past ten years to serve the needs of international shippers on an expedited basis; Customs cannot be permitted to negate these commercial gains by living in the 1960's or 1970's. Rather, Customs must be given the tools to permit it to react to today's commercial realities — and these tools must be made available to all entities, whether express carriers, air freight forwarders or customs brokers, on an equal basis.

Fortunately, the Customs Service has begun to recognize the needs to service the importing community as it exists today. Accordingly, a new Part 128 of the Customs Regulations has been proposed and we hope that it will be finalized in the very near future. This Regulation will specifically provide for the needs of the express consignment industry, while at the same time requiring that those entities taking advantage of the expedited clearance procedures commit to providing Customs with the information it requires in the form that Customs requires.

This Regulation, however, is only a start. Congress must insure that user fees paid by our industry are in fact used to support Customs Services and not used to reduce the general federal deficit; Congress must also insure that companies in our industry do not pay twice for the same service — once through the payment of the general user fees and once through the reimbursable fee program. In addition, Customs must be given the manpower and funding necessary to provide enough inspectors at the hours our industry needs these inspectors, and, to the extent that either personnel or funding is unavailable, Congress should modify existing procedures to make better use of existing resources. In the real world, international business runs on a 24-hour a day clock and Customs must insure that these needs are met whenever and wherever necessary. More specifically, the Air Freight Association suggests that legislation be introduced and enacted which would:

1. Raise the informal entry limit from its present $1,250 to $2,500;
2. Raise the definition of a de minimis entry from $5 to $100;
3. Eliminate the regulatory requirement to use a customs house broker for informal entries.

Each of these legislative changes would permit inbound air freight to be processed more expeditiously and with less strain on existing Customs Service personnel. At the same time, the changes would have little, if any, effect on the Customs Service's ability to collect the proper duties or to monitor incoming shipments.

Many of the individual member companies of our Association will be testifying or submitting written comments with respect to specific issues of concern to these companies. On behalf of the air cargo industry, we thank you for soliciting our input and would be happy to respond to any questions the Subcommittee might have.

APPENDIX A

AIR FREIGHT ASSOCIATION MEMBERSHIP LIST

REGULAR MEMBERS

AIR EXPRESS INTERNATIONAL	Darien, Connecticut
AIRBORNE EXPRESS	Seattle, Washington
AIT FREIGHT SYSTEMS, INC.	Elk Grove, Illinois
AMERFORD INTERNATIONAL CORPORATION	Jamaica, New York
ARROW AIRWAYS, INC	Miami, Florida
ASSOCIATED AIR FREIGHT	New Hyde Park, New York
THE AVIATION GROUP (ORION AIR)	Raleigh, North Carolina
BURLINGTON AIR EXPRESS	Irvine, California
CF AIR FREIGHT	Palo Alto, California
DHL AIRWAYS, INC.	Redwood City, CA
EMERY WORLDWIDE	Wilton, Connecticut
EVERGREEN INTERNATIONAL AIRLINES	McMinnville, Oregon
EXPRESS ONE INTERNATIONAL	Dallas, Texas
FEDERAL EXPRESS CORP.	Memphis, Tennessee
MID PACIFIC AIRLINES	Indianapolis, Indiana
NORTHERN AIR CARGO	Anchorage, Alaska
PROFIT FREIGHT SYSTEMS	Marietta, Georgia
ROSENBALM AVIATION	Ypsilanti, Michigan
SMB STAGE LINE, INC.	Dallas, Texas
SOUTHERN AIR TRANSPORT	Miami, Florida
SPIRIT OF AMERICA AIRLINES	Burlingame, California
SURFAIR	Atlanta, Georgia
TRANS CONTINENTAL AIRLINES, INC.	Ypsilanti, Michigan
TRANSINTERNATIONAL AIRLINES	Orlando, Florida
UNITED PARCEL SERVICE	Louisville, Kentucky

ASSOCIATE MEMBERS

AIR CARGO MANAGEMENT GROUP	Seattle, Washington
ALLENTOWN-BETHLEHEM-EASTON AIRPORT	Lehigh Valley, Pennsylvania
AMERICAN CARGO HANDLING AND EQUIPMENT	Denver, Colorado
COLOGRAPHY GROUP	Roswell, Georgia
COMBS GATES-DENVER	Denver, Colorado

APPENDIX B--Journal of Commerce
11/22/88

UK's Laura Ashley Stresses Updating Distribution Methods

By EDWIN UNSWORTH
Journal of Commerce Staff

LONDON — When a Laura Ashley shop in any one of 137 North American cities wants new clothing stocks from its British parent it sends an electronic message into the group's computer in New Jersey, which passes it on to a central computer and depot in Britain.

The goods are dispatched via a weekly air container consignment to Kennedy Airport, New York and usually arrive at the shop within three days of being ordered.

"One way in which we keep our overheads low is by having little or no warehousing," explained John James, chief executive and vice chairman of Laura Ashley Holdings PLC.

With the group's phenomenal growth in the United States, where 34 more stores were added last year, he envisages an increase in air carryings.

But the up-market clothing and textiles chain sends U.S. shop orders for home furnishings, such as wall coverings and curtains, by sea.

"However, we're currently looking at sending home furnishings by air so that we can fill a whole aircraft," Mr. James said recently in London at a press lunch.

> 'We're currently looking at sending home furnishings by air so that we can fill a whole aircraft.'
>
> — John James
> Chief Executive
> Laura Ashley Holdings PLC.

Peter Phillips, group finance director, added that Laura Ashley "could open 60 shops in the United States tomorrow if we were willing to go down-market into secondary shopping malls."

But Laura Ashley Holdings, founded 35 years ago by husband and wife team Laura and Bernard Ashley selling printed dish towels from a London attic, is too up-market for that.

Initially they marketed their printed wares to other retailers, but in 1968 they moved into clothing and opened the first shop to carry their own name.

Today the group, now based in mid-Wales, markets textiles, home furnishings and women's clothing.

The stores also sell their own brand of Laura Ashley perfumes.

Another retail subsidiary, Mother and Child shops, sells "Sunday best" children's clothing. There are now eight Mother and Child stores, of which seven are in the United States. By the end of the year there will be 28, of which half will be in the United States.

Its only men's products are sold by two subsidiaries acquired last year, both of which fit the Laura Ashley image.

Penhaligon's is a 130-year-old British retailer of men's toiletries, with six U.K. shops, that Laura Ashley plans to extend into North America and Continental Europe in the near future.

In the United States Laura Ashley bought Willis & Geiger, the supplier of high-quality outdoor clothing, including the flying suit worn by Charles Lindbergh during his solo crossing of the Atlantic. Laura Ashley similarly plans to expand Willis & Geiger by adding to its existing three retail outlets with more shops in the United States and subsequently overseas.

In Continental Europe, where Laura Ashley has 33 outlets with eight more being added in 1988, "We could double the number of shops quite easily," Mr. Phillips said.

Added to 140 shops in Britain, 19 in Australia and five in Japan, Laura Ashley has a total of 305 shops. Within six to nine months, another subsidiary, Laura Ashley Homes, will be launched to sell the group's own brands of furniture. Mr. Phillips expects the total number of stores to rise by early 1989 to 444.

Pretax profits for 1987-88 were £23.1 million ($39 million), compared with £2.5 million in 1981. North America accounts for 37.3% of sales, but because of higher profit margins, contributes 49% of operating profits.

To meet the demands of stocking these stores with its own products, most Laura Ashley shops operate an Electronic Point of Sales system linking them to the central computer.

Orders are filled from two main warehouses, one at the group's Welsh headquarters and another serving Continental Europe at Helmond, in the southern tip of the Netherlands. This latter warehouse will be moved next year a short distance away to Eindhoven Airport to make greater use of air freight.

STATEMENT OF THE AMERICAN CORDAGE AND NETTING MANUFACTURERS
AND
THE CORDAGE INSTITUTE

Introduction

On behalf of the American Cordage and Netting Manufacturers (ACNM), an incorporated non-profit association dedicated to a strong American Industry, and the Cordage Institute (CI), an incorporated non-profit association dedicated to quality products crafted with pride, together representing domestic manufacturers of cordage and netting, we appreciate this opportunity to describe to you a continuing and annoying problem caused by the lack of appropriate enforcement of a classification determination by the U.S. Customs Service (Customs) and to request that both this subcommittee and the full Committee include an admonition to Customs regarding this situation in their reports.

Background

As the result of its investigation following a Domestic Interested Party Petition (under 19 U.S.C. § 1516(b)), Customs issued a ruling (T.D. 85-183, November 24, 1984; copy attached at A) which stated in pertinent part:

> ...polypropylene rope and twine made of fibrillated film or strip which in their condition before fibrillation are over one inch in width are properly classifiable under the provisions for cordage of man-made fibers in items 316.55 and 316.58, TSUS.

This determination not withstanding many shipments of these products have entered the customs territory of the United States classified in a "basket category" of plastic items (plastic, not specially provided for, 774.58 TSUS) which is subject to neither the duty nor the quotas nor the bar to GSP status to which the correct classification, cordage of man-made fibers, is subject. The confusion and uncertainty at the ports is so pronounced that we have requested another letter ruling reaffirming the 1984 Customs determination. Meanwhile products from many countries routinely enter the United States quota- and duty-free in direct contravention of Congressional directives.

Current Situation

The problem arises when importers and their agents try to import products as nonfibrillated products. Their argument is that the strip from which the rope or twine was made has been ironed to reduce fibrillation so it should not be considered fibrillated.

It is our belief, well borne out by the scientific community, that once polyolefin is oriented, fibrillation, a naturally occurring process, takes place (See summary attached at B). Based upon tariff classification history and the Customs ruling, supra, all cordage items of this construction should be classified as cordage.

Unfortunately, many shipments of these products are not so classified, but rather are classified as plastic strip or plastic material not specially provided for ("basket" category 774.58, TSUS). Importers apparently are claiming that unless Customs inspectors can see the fibrillation on the finished product, the polyolefin is not fibrillated. Balderdash!

Because separate import statistics within the basket category are not available, we are unable to provide an exact dollar figure for these wrongly classified imports; we do have industry estimates which place the annual volume of misclassified product in excess of 8 million pounds. The correct duty rates for these products imported as cordage of man-made fibers are either 8% ad valorem or 12.5 cents per pound plus 15% ad valorem, depending on fiber diameter; imported as plastic, the duty rate is only 5.3% ad valorem. The cordage categories are not eligible for GSP treatment whereas the plastic n.s.p.f. category is. Moreover, as textiles cordage products are subject to the

Multifiber Arrangement and negotiated bilateral textile treaties - plastics are not. This classification problem, therefore, results in estimated annual losses of approximately $1.5 million to the U.S. Treasury Department in the form of unassessed and uncollected tariff revenue.

Relief Sought

We request this Committee to admonish the Customs Service to enforce the determination which they have previously made.

If we can provide further information to assist you in this regard, please do not hesitate to contact us.

Customs Bulletin

Regulations, Rulings, Decisions, and Notices
concerning Customs and related matters

and Decisions

of the United States Court of Appeals for
the Federal Circuit and the United
States Court of International Trade

Vol 19 NOVEMBER 20, 1985 No. 47

This issue contains:

U.S. Customs Service
  T.D. 85-183 Through 85-185
  General Notice
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  Slip Op. 85-110 Through 85-114
  Protest Abstracts P85/200 Through P85/213
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AVAILABILITY OF BOUND VOLUMES

See inside back cover for ordering instructions

THE DEPARTMENT OF THE TREASURY

Attachment A

U.S. Customs Service

Treasury Decisions

19 CFR Part 175

(T.D. 85-183)

Decision on Domestic Interested Party Petition Concerning Tariff Classification of Polypropylene Rope and Twine

AGENCY: U.S, Customs Service, Department of the Treasury.

ACTION: Final classification decision.

SUMMARY: This document gives notice of a change in the tariff classification of certain polypropylene rope and twine made from fibrillated strips, which are currently classified under the provision for articles of plastics, not specially provided for. This classification carries with it eligibility for an exemption from duty under the Generalized System of Preferences for merchandise produced in beneficiary developing countries. In the case of baler twine produced in certain countries, there is also eligibility for an agricultural implements exemption. Under this change, this type of rope and twine will be classified as cordage of man-made fibers in either of two tariff schedule items depending on the diameter of the cordage. The document also advises that the tariff classification of certain other plastic twine made from fibrillated strips, now classified as cordage, and certain rope made from nonfibrillated plastic strips, now classified as articles of plastics, not specially provided for, will not change.

EFFECTIVE DATE: This decision will be effective as to merchandise entered for consumption or withdrawn from warehouse for consumption on or after 30 days from the date of publication of this decision in the CUSTOMS BULLETIN.

FOR FURTHER INFORMATION CONTACT: James C. Hill, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8181).

SUPPLEMENTARY INFORMATION

BACKGROUND

This document pertains to the tariff classification of certain imported polypropylene rope and twine. A petition dated November 9, 1982, was filed with Customs under § 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), by the Sunshine Cordage Corporation, an American manufacturer of synthetic polypropylene rope. An amended petition was filed on December 14, 1982.

The petitioner contends that the cordage which is the subject of this petition and which is currently classified by Customs under the provision for articles of plastics, not specially provided for, n.s.p.f., in item 774.55, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), is more appropriately classified under the provision for cordage of man-made fibers in items 316.55 or 316.58, TSUS, depending on diameter. The current rate of duty for articles classified under item 774.55, TSUS, is 6.1 percent ad valorem, and the current rate of duty for articles classified under items 316.55 and 316.58, TSUS, is 4 cents per pound plus 10.3 percent ad valorem and 12.5 cents per pound plus 15 percent ad valorem, respectively. The petitioner correctly notes that articles classified under item 774.55, TSUS, can be entered free of duty under the Generalized System of Preferences (GSP) (see sections 10.171–10.178, Customs Regulations (19 CFR 10.171–10.178)), if imported directly from a beneficiary developing country, whereas articles classified under items 316.55 and 316.58, TSUS, cannot be entered free of duty under the GSP. Classification under either of those items also precludes the agricultural implements exemption in item 870.40, TSUS.

A notice inviting the public to comment on the petition was published in the Federal Register on April 29, 1983 (48 FR 19510) and a document correcting certain omissions in that notice was published on May 25, 1983 (48 FR 23513). The original deadline for comments was extended to August 26, 1983, by a Federal Register notice published on July 26, 1983 (48 FR 33961). However, since the comments received in response to these notices raised additional issues, another notice was published in the Federal Register on March 30, 1984 (49 FR 12801), setting forth these issues and requesting further comments by May 29, 1984. Of the 35 comments received, 28 supported the petition and 7 opposed it.

DESCRIPTION OF MERCHANDISE

The merchandise which is the subject of this document is rope made from extruded plastic film or strips which are over one inch wide, but which due to their special chemical and physical properties, are transformed into fibrillated strips while being twisted into rope strands or which are fibrillated beforehand. In the latter case, fibrillation may be accomplished by a separate twisting or by cutting with pins or knives. The final cordage product, depending on the degree of coarseness of the fibers, resembles polypropylene rope made from monofilaments. The rope for which classification will not be changed is made from twisted plastic nonfibrillated film or strips over one inch wide. The twine for which classification will not be changed is made from a single strand of twisted fibrillated strip which was one inch or less in width before fibrillation.

DISCUSSION OF COMMENTS

Generally: The multiplicity of points made in the responses translate into six major issues, as they relate to the general question of whether the instant merchandise meets the requirement in Headnote 1(a), Part 2, Schedule 3, TSUS, that cordage consist of "assemblages of textile fibers or yarns." Omitted is any discussion concerning the claims made by proponents of the petition that continuation of the lower-rate classifications will have continuing adverse economic impact on the domestic cordage industry and its suppliers and the claims made by opponents that failure of Congress to enact legislation changing the Customs classifications suggests approval of such treatment. Customs cannot consider claims of that nature.

The nonfibrillated strip issue: The first issue is raised by the petitioner's contention that the requirement in Headnote 3(d), Subpart E, Part 1, Schedule 3, TSUS, that plastic strips, in order to be regarded as textile fibers, must be not over one inch in width in their "unfolded, untwisted and uncrimped" condition, applies only to articles made of strips which are not folded, twisted or crimped. However, the plain meaning of the headnote is otherwise. The statutory language is clear and unambiguous and, therefore, must be the "primary source for the determination of legislative intent" *Merry Mary Fabrics, Inc.* v. *United States*, 1 CIT 13, 17 (1980). See also *Le Jeune, Inc.* v. *United States*, 67 Cust. Ct. 301, C.D. 4289 (1971), in which the tariff classification of crimped strips was evaluated against the headnote one-inch limitation. Accordingly, we find at the outset that the current classification of rope made from nonfibrillated strips over one inch wide is correct.

The one-inch width limitation issue: The second issue raised in the petition and opposing comments is whether Customs has properly made a distinction between cordage made from fibrillated film or strips which, before fibrillation, are over one inch wide and those which are narrower. It is stressed in the opposing comments that fibrillation of strips does not result in anything other than fibrillated strips and, therefore, the one-inch width headnote limitation applicable to strips is applicable to fibrillated strips. This view, however, is not supported by the authorities which we have consulted which rather suggest fibrillation results in a transformed product. For example, fibrillated strips are often referred to as yarns, although that is not conclusive of what constitutes a yarn for tariff classification purposes. See, for example, *Encyclopedia of*

Polymer Science and Technology (1968), vol. 9, p. 410; *Modern Textile & Apparel Dictionary* by George E. Linton (1973), p. 235; *Fiber to Fabric* by Bernard P. Corbman (5th ed. 1975), p. 476.

If not strips and therefore not technically within the one-inch width headnote limitation, the opponents to the petition contend it is within the administrative authority of Customs to apply a one-inch width limitation anyhow to establish a standard where objective criteria are called for but are not specifically set forth in TSUS headnotes, and Customs has properly applied such a standard with respect to fibrillated strips. However, arguments promoting standards or product distinctions not otherwise specifically mandated by the TSUS, to create exceptions to broader tariff classificaiton principles otherwise militating against widely disparate tariff treatment for essentially similar merchandise are not persuasive. Nor are the arguments persuasive to the extent they promote a product distinction which for much of the merchandise in question is impractical in its application. For example, for fibrillated strips which are more yarn-like and less coarse or ribbon-like, it is often impossible without a laboratory analysis to determine the width of the film or strips from which the fibrillated product originated. Accordingly, in connection with this review we now find that continuation of the distinction in question as it applies to the tariff classification of cordage is no longer justifiable and must be regarded as an "artifical * * * distinction * * * requiring correction" as dealt with by the court in *United States* v. *Rembrandt Electronics, Inc.*, 64 CCPA 1, 5, 6, C.A.D. 1175 (1976).

It should be further noted that the artificial one-inch limitation reflects a further misapplication of principles pertinent to determining what material a product is made of. In accordance with General Headnote 9(f)(i), TSUS, an article may be considered as "of" a given material if it is in chief value of that material, and the cost comparison is to be made at the time of final assembly. *Kores Manufacturing Corp.* v. *United States*, 3 CIT 178 (1982). However, an assembly in which materials of the same composition are joined cannot be a basis for cost comparisons, and the manufacture of cordage is generally not referred to as an assembly. Therefore, we find that the concept incorporated in the TSUS based on what a product is made "of" must be distinguished from what a product is made *from*. Accordingly, what the instant merchandise is made of must be determined as of the time of its importation in its condition as imported, and as of that time and in that condition it is made of twisted fibrillated fibers which no longer retain the characteristics of the strip or film from which it was made.

The extrusion or other process issue: The opponents of the petition argue that fibrillated strips are not textile fibers because the provision for fibers made by "other processes" in Headnote 2(b), Subpart E, Part 1, Schedule 3, TSUS, excludes products made by an extrusion since extruded products are otherwise provided for in that headnote, and the intervening fibrillation process disqualifies the merchandise from that provision. However, we find that the intervening fibrillation process warrants the opposite conclusion. It is also contended the *Kores* decision, *supra*, stands for the proposition that textile fibers cannot be formed by cutting film. However, the cutting process discounted by the court in that matter occurred after the point in time when there had to be in existence a textile fiber for component-in-chief-value cost comparisons.

The plexiform filament issue: In arguing that fibrillated strips are not subject to limitations applicable to nonfibrillated strips, the proponents of the petition claim that fibrillated strips otherwise qualify as textile fibers by falling within the definition for "plexiform filaments" in Headnote 3(c), Subpart E, Part 1, Schedule 3, TSUS, which is not subject to any dimensional criteria. The opponents disagree. The issue is whether fibrillated strips are "plexiform filaments" as that term is used in the TSUS.

The opponents cite legislative history extensively, the most pertinent part of which was cited and quoted at length in our Federal Register notice of March 30, 1984. The most pertinent secondary authority cited was *Synthetic Fibers from Petroleum* by Marshall Sittig (1967), p. 267. These materials show that the term "plexiform filaments" was coined as a variation of the term "plexifilaments" which was invented for patent application purposes by the inventors of certain man-made fibers produced by what was called dry spinning or flash spinning techniques. The term "plexiform filaments" otherwise has no current recognition in any technical references or treatises or commercial nomenclature.

Accordingly, technical opinions submitted, which both advocate and oppose the view that fibrillated strips constitute plexiform filaments, have no nexus with technical references and therefore must be regarded as conclusions principally influenced by the legislative history and other considerations from which we must draw our conclusions. However, for the purpose of the tariff classification of the instant merchandise, we abstain from drawing any such conclusions at this time because whether or not fibrillated strips constitute plexiform filaments is a moot point.

If fibrillated strips do not qualify as plexiform filaments as described by headnote definition, they would still qualify as textile fibers under Headnote 3(f), Subpart E, Part 1, Schedule 3, TSUS, which encompasses "any other fibrous structure suitable for the manufacture of textiles."

The suitability-for-use issue: The issue raised by the foregoing position as to whether fibrillated strips are suitable for the manufacture of textiles is pertinent whether or not they are regarded as plexiform filaments since qualifying as a plexiform filament under the headnote definition is also conditioned on the same suitability-for-use criterion. Accordingly, it is claimed by opponents of the petition that even if, or whether or not, they are regarded as plexiform filaments, polypropylene fibrillated strips are used only in cordage, are never used in textiles and cannot be used in textile machines, and, therefore, do not meet the suitability-for-use-in-the-manufacture-of-textiles requirement. The proponents of the petition, however, state that they are suitable for use in textiles and cite as an example use in backing for rugs. The authorities support the latter position. See, for example, *Fiber to Fabric*, *supra*, where uses in carpet backing are described. See also the *Handbook of* Polyolefin Fibres by J. Gordon Cook (1967), p. 420, where uses on textile machines are also referred to.

The assemblage issue: The final issue is whether single strand twine made of a single fibrillated strip, all of the foregoing considerations to the contrary notwithstanding, must still be excluded from the cordage provisions because it does not consist of "assemblages" of fibers. However, as previously discussed, all of the merchandise must be classified primarily in its condition as imported. Accordingly, even though the manufacture of single strand twine starts with a single strip, its characteristics in its fibrillated condition as imported are those of assemblages of fibers.

TARIFF CLASSIFICATION

After careful analysis of the comments, and further review of the matter, we find that polypropylene rope and twine made of fibrillated film or strips which in their condition before fibrillation are over one inch in width are properly classifiable under the provisions for cordage of man-made fibers in items 316.55 and 316.58, TSUS. Accordingly, the classification of such merchandise under the provision for articles of plastics, n.s.p.f., in item 744.55, TSUS, will be changed, and the petition is allowed to that extent.

The petition is denied to the extent that we find the classification of polypropylene cordage made of nonfibrillated film or strips over one inch wide, under the provision for articles of plastics, n.s.p.f., in item 774.55, TSUS, is correct and will be continued. We also find that the classification of twine made from a single strand of fibrillated polypropylene material, which before fibrillation was one inch or less in width, as cordage, is correct and will be continued. This decision is limited to the described rope and twine and no distinctions will be made between products made by different fibrillation processes or those having different degrees of strand coarseness. Therefore, this decision is not dispositive of the tariff classification of other fibrillated plastic strip or film products. The petitioner may further argue its position on the classification of nonfibrillated rope by filing a notice of intention to contest this decision as provided for in § 175.23, Customs Regulations (19 CFR 175.23). Importers adversely affected by this decision must prosecute their disagreements under the protest procedure in Part 174, Customs Regulations (19 CFR Part 174).

AUTHORITY

This notice is published under the authority of § 516(b), Tariff Act of 1930, as amended (19 U.S.C. 1516(b)), Tariff Act of 1930, and § 175.22(a), Customs Regulations (19 CFR 175.22(a)).

DRAFTING INFORMATION

The principal author of this document was John E. Doyle, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

WILLIAM VON RAAB,
Commissioner of Customs.

Approved: October 17, 1985.
DAVID D. QUEEN,
Acting Assistant Secretary of the Treasury.

[Published in the Federal Register, November 4, 1985 (50 FR 45812)]

(T.D. 85–184)

Approval of Glen Hill Inspection Company To Gauge Imported Petroleum and Petroleum Products

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of approval.

SUMMARY: Pursuant to § 151.43(b), Customs Regulations (19 CFR 151.43(b)), Glen Hill Inspection Company, P.O. Box 1842, Pasadena, Texas 77501, has applied to Customs for approval to gauge imported petroleum and petroleum products. It has been determined that Glen Hill Inspection Company meets all of the requirements to be a Customs approved public gauger.

Accordingly, the application of Glen Hill Inspection Company to gauge imported petroleum and petroleum products in the Customs Districts of Houston-Galveston, Texas, and Port Arthur, Texas, is approved.

DATE: November 20, 1985.

FOR FURTHER INFORMATION CONTACT: Roger J. Crain, Technical Services Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-2446).

Dated: November 4, 1985.

ROGER J. CRAIN,
Chief,
Technical Section, Technical Services Division.

Attachment B

SUMMARY
OF
ACNM POSITION ON
FIBRILLATED POLYPROPYLENE CORDAGE

A. INTRODUCTION

We believe the history and text of the TSUS demonstrate, and Customs Service subsequent rulings clearly express, that "fibrillated strips" are definitely plexiform filaments and are textile man-made fibers for tariff purposes; there is no question that a "fibrillated strip," regardless of degree of fibrillation or when it occurs, which has been twisted and imported as cordage constitutes cordage for tariff classification purposes and further processing to reduce fibrillation, such as ironing, is irrelevant if the polypropylene has been oriented.

B. Production of a Fibrillated Strip

A "fibrillated strip" however derived, from cellulosic or noncellulosic material, is a plexiform filament. "Fibrillated strip" describes an intermediate stage of production for many products like polypropylene cordage. The structure can be described as a fibrous network or plexus - a plexiform filament, which, either alone or in combination with others, may be twisted into cordage or woven to form a textile product.

Fibrillation is a naturally occurring process. To fibrillate a piece of plastic film, then, is to form it into a network or assemblage of small filaments or fibers (fibrils) which exist within the structure, whether or not visible to the natural eye. The orientation process, in one operation, converts the extruded plastic film into a plexiform filament structure with high machine direction strength and virtually no transverse direction strength. The plexiform filaments or monofilament are wound on conventional textile winders.

For certain textile end uses the oriented film can be subjected to a separate fibrillation process to enhance the natural fibrillation which plexiform filaments exhibit. Other finishing processes may be used to lessen the degree or visibility of fibrillation. Additional processing steps may then be added to change the shape or outward appearance of the product; these steps do not, however, have any impact upon the fibrillation which is inherent in orientation.

C. Appropriate Treatment of Cordage Products Made from Fibrillated Polyolefin Under the TSUS

The definitions of both "plexiform filaments" and "strips" were included in the current TSUS when it was enacted in 1963 and they have remained unchanged since that time. The description of plexiform filament was an attempt by the Commission provide for clear definitions which should not be avoided by "manipulation."

The definition of cordage in the TSUS carries a clear end use designation which cannot be ignored. There has never been any other intended use for the imported products in question than as cordage. They should, therefore, be classified as cordage because they fit the description of cordage as to construction and are intended for end use as cordage.

D. **Summary**

The language of T.D. 85-183 is clear: "polypropylene rope and twine made of fibrillated film or strip which in their condition before fibrillation are over one inch in width are properly classifiable under the provisions for cordage of manmade fibers in`items 316.55 and 316.58, TSUS." Those not fibrillated are not. The issue of "how much fibrillation" is a red herring. inherent in the above-quoted portion of the determination is the historical use provision. These items are used as cordage; they are made of fibrillated polypropylene; therefore they are classifiable under 316.55 and 316.58, depending upon fiber diameter. Any other classification would require a change of practice procedure on behalf of the Customs Service.

COMMENTS OF THE AMERICAN PETROLEUM INSTITUTE ON THE U.S. CUSTOMS SERVICE DRAWBACK PROCEDURES FOR THE PRINTED RECORD OF THE OVERSIGHT SUBCOMMITTEE HEARING ON SEPTEMBER 27, 1988

Petroleum imports are the largest single item of U.S. imports, so our members have extensive dealings with Customs. When problems have surfaced in the past, acceptable solutions have often been found through mutual agreement, thereby lessening the U.S. Customs' and petroleum industry's burdens while keeping within the framework of the laws and regulations. When legislative change has been necessary, as it was recently to achieve appropriate treatment of water and sediment in crude oil imports, Customs has been aware of these needs and has not objected to them. However, our generally good relations have not eliminated all disagreements.

The drawback program is the locus of one current disagreement. Drawback is a program whereby firms who import a raw material, transform it into a product and export the product can get a refund of most of the import duty paid. The purpose of the program is to allow U.S. firms to compete in international markets without the uncompetitively high costs of import duties.

This brief description indicates that the major issue, for a bulk product like petroleum, is "how does Customs decide if a particular batch of product is made of imported material, and therefore eligible for a drawback (or refund of duty) if it is exported?" Domestic crude oil and imported crude are mixed together in tanks, pipelines, and in refinery processing facilities. Fungible petroleum products like jet fuel made of both imported and domestic crude are mixed during production, storage and transportation. Frequently product of different refiners is mixed in pipelines and storage tanks. Therefore, it is clear that identification of drawback eligible product is a record-keeping process. It does not depend on physically separating particular identifiable batches of crude and product.

An example demonstrates this last point. At JFK Airport in New York at least 10 oil companies supply jet fuel to 50 - 60 airlines through a common storage facility of 90 tanks. The refueling facility is a separate company not operated by the jet fuel suppliers. Jet fuel from a single supplier may be mixed with that from others in a pipeline on the way to JFK. An individual delivery of fuel goes first through several processing steps to remove all water, sediment and other impurities. This process may take several hours. At this stage it may be mixed with fuel being delivered by other suppliers. It then is pumped into various storage tanks which are interconnected, and may be subsequently shifted from tank to tank before being loaded onto an aircraft as fuel for a domestic or foreign flight.

The fueling facility company has no need to track the shipments of particular suppliers through this process, and no ability to segregate them, so calculation of drawback eligibility has to be based on simple, practical inventory records, if it is to be done at all. Companies which supply fuel to JFK actually get drawback on only a small part of the theoretically eligible volume for numerous reasons -- of which recordkeeping problems are one. Jet fuel is imported duty free in bond for international flights in competition with domestically refined fuel.

To apply for drawback in this and similar situations, oil companies have calculated their drawback claims using monthly inventory records, i.e., beginning inventory at JFK, shipments to JFK, withdrawals for international flights, etc. Further, since they have no way of knowing which particular tanks "their product" is in, they treat the entire 90 tanks as if they were one large tank, which is not unrealistic since many of the tanks are interconnected. These are simple, workable procedures based on the realities of the situations at JFK and other international airports.

Customs has issued a ruling (C.S.D. 88-1, copy attached) which eliminates these simple and practical procedures. By issuing C.S.D. 88-1, Customs has reversed its own prior precedential decisions which acknowledged and authorized generally accepted accounting periods, i.e., calendar month, and accepted accounting methods and procedures routinely utilized in the petroleum industry for commingled fungible goods (i.e., FIFO) without distinction of by-tank accounting in other than the most basic support records. Customs has said that C.S.D. 88-1 "circumscribes" C.S.D. 82-35 (copy attached) which specifically addresses major tank farm accounting for product between multiple users, but in effect it reverses that decision. To "circumscribe" public decisions by private letter rulings does not give the affected public effective notice. Petroleum suppliers view C.S.D. 88-1 as a reversal, as do some Customs field personnel who deal with the drawback program.

Customs' latest ruling requires that companies calculate their drawback claims on a daily basis - or possibly transaction by transaction - and by keeping track of the contents of each tank. The procedures which Customs now requires, where they are even possible, will be very costly to the petroleum industry and perhaps Customs as well. C.S.D. 88-1 will also discourage drawbacks. All of this has been explained to Customs, to no avail. In fact, questions regarding C.S.D. 88-1 were submitted to Commissioner Von Raab by Senator David Boren and Representative Beryl Anthony. The responses they received from Customs verified that Customs does not understand the facts that have been presented regarding record-keeping, recorded accountability or petroleum operations.

The statute does not require that Customs determine eligibility for drawback based on daily records, nor does it say how Customs should treat commingled product in a multi-tank facility. All Customs need do to satisfy the law is establish reasonable rules for determining drawback eligibility, ones consistent with the intent of the statute -- to encourage exports -- and which are reasonable and enforceable and whose costs, record keeping burdens, etc. are in line with the goals of the statute.

Finally, Customs ruling C.S.D. 88-1 will cost the government money; it will not "protect the revenue" as Customs believes. This is because duties on crude oil imports are low -- 5.25 to 10.5 cents per barrel -- while the U.S. corporate income tax is 34%. Thus even a small additional profit on an export sale, as opposed to airline consumption of duty free jet fuel imported in bond, will yield more revenue to the Treasury than will be lost in paying drawback claims. The purpose of the drawback program is to encourage U.S. exports and help U.S. businesses compete in the international market. Increased U.S. exports are needed at a time when the trade deficit is a national concern. C.S.D. 88-1 is in opposition to these federal objectives.

Because C.S.D. 88-1 imposes unnecessary costs and burdens on export related activities of the oil industry (as well as other industries) because it costs the government revenue, raises Customs' costs, and aggravates the U.S. trade deficit, it is an inappropriate decision and one Customs should withdraw.

(C.S.D. 82-35)

Drawback: Use of FIFO Basis for Indentification for Drawback on Fungible Merchandise Belonging to Several Persons and Commingled in Storage

Date: September 10, 1981
File: DRA-1-CO:R:CD:D RB
213498

Issue: When fungible merchandise belonging to several persons is commingled in storage may each person for drawback purposes identify its withdrawals on a first-in-first-out basis, considering only its own inputs and withdrawals?

Facts: An aircraft fueling firm receives jet fuel from 10 or more refiners, commingles this fuel by placing it in storage tanks without regard to the supplier, and then from the commingled mass distributes fuel to over 70 airlines. About 80–85% of the fuel is estimated to be used in foreign flights.

Law and analysis: The requirements of section 22.4(f) of the Customs Regulations have been suspended to permit the use of first-in-first-out accounting (FIFO) for identification for drawback purposes in place of low-to-high identification (Letter to All Regional Commissioners dated September 2, 1981).

Also Customs has ruled that when fungible merchandise belonging to several persons is commingled, each person may account for his withdrawals considering only his own imputs and withdrawals. (OR&R Ruling 051786 JH dated November 14, 1980; OR&R Ruling 716534 M dated June 8, 1981).

Ruling: The answer to the issue presented is yes.

Effect on other rulings: T.D. 67-48(1) and unpublished opinions contrary to this ruling are revoked.

U.S. Customs Service

Customs Service Decisions

Department of the Treasury,
Office of the Commissioner of Customs,
Washington, D.C., June 1, 1988.

The following are decisions of the United States Customs Service which are of sufficient interest or importance to warrant publication in the Customs Bulletin.

John E. Elkins,
(for Harvey B. Fox, Director,
Office of Regulations and Rulings.)

(C.S.D. 88-1)

This ruling reaffirms the identification principle approved in C.S.D. 83-54, holding that fungible products commingled in storage and withdrawn therefrom for drawback purposes may be identified against the drawback products commingled therein in the order of their receipt into storage; letter of August 12, 1983 (215762) attached.

Date: June 29, 1987
File: DRA-1-CO:R:CD:D
218801 RB

Issues:

(1) What is the proper method for applying C.S.D. 83-54, when fungible drawback and nondrawback products are commingled in storage?

(2) In order to be recognized as a "drawback product" after delivery from the manufacturer, must the product be covered by a certificate of manufacture and delivery?

Facts:

A drawback claimant receives products manufactured under 19 U.S.C. 1313(b), *i.e.*, residual oil and distillate oil, which it seeks to export under 19 U.S.C. 1309(b), or which it blends to produce intermediate fuel oil (IFO) prior to desired export thereunder. To obtain drawback in this case, the claimant wishes to apply the identification procedure approved in C.S.D. 83-54 using a "30-day accounting period" which treats material in different storage tanks as commingled, and which ignores nondrawback receipts and withdrawals from storage.

Law and analysis:

(1) Under the identification principle approved in C.S.D 83-54, "fungible products commingled in storage and withdrawn therefrom for drawback purposes may be identified against the drawback products *commingled therein* in the order of their receipt into storage" (emphasis added).

By way of background, under earlier Customs rulings, when drawback and nondrawback material were commingled, drawback withdrawals had to be accounted for first against the commingled nondrawback input, resulting in little or no drawback as a practical matter (see, *e.g.*, Bureau letter dated March 5, 1956, to Supervising Customs Agent, Boston). Yet, while the basic focus of drawback identification has changed dramatically, the inventory recordkeeping requirements applicable thereto essentially have not (compare, *e.g.*, Bureau letter dated February 14, 1957, with Headquarters letter dated August 12, 1983, file DRA-1-09-CO:R:CD:D 215762).

In this connection, it is axiomatic, for example, that drawback input shown to be in one storage tank would not be commingled with nondrawback input shown to be in another tank (see Bureau letter dated September 24, 1946, abstracted as T.D. 51645-F, re: Cities Service Oil Co., Bureau letter dated May 5, 1955, to Supervising Customs Agent, San Francisco; and Bureau letter dated February 14, 1957, *supra*).

C.S.D. 82-35, cited by the claimant, is not authority to the contrary. The commingling involved therein must likewise occur within each tank. If this were not so, nondrawback material documented as being in one tank could be withdrawn and exported, and claimed for drawback as if it were actually drawback material which is in fact shown by records to be stored in another tank. This would clearly constitute the substitution of finished products, which is unlawful under section 1313(b) (see Headquarters letter dated June 1, 1982, file DRA-1-CO:R:CD:D 214335; Headquarters letter dated September 12, 1985, file DRA-1-09 CO:R:CD:D 217983). To treat such material as "commingled" under the ruling therefore would be to abide a fiction which would effectively accomplish by indirection that which the law does not permit by direction.

Accordingly, in establishing under the authorized procedure whether and to what extent certain input exists in commingled storage against which withdrawals for drawback may be charged, inventory records must be maintained showing the total fungible input commingled in storage, the total drawback input commingled therein, the date of such commingling, the date on which each withdrawal is made, and the quantity withdrawn (see Headquarters letter dated August 12, 1983, *supra*, set forth as an addendum hereof, which plainly illustrates the lawful application of C.S.D. 83-54).

The citation in C.S.D. 83-54 to the producibility principle (*i.e.*, the September 1, 1965, memorandum of the General Counsel, Department of the Treasury; currently see T.D. 84-49) was intended to furnish analogous support for the basic concept approved in the ruling because, generally speaking, the producibility principle, in its bare essence, similarly provides that where same-kind-and-quality (SKAQ) and non-SKAQ merchandise are used in manufacture under section 1313(b), any resulting products which are exported may, insofar as possible, be identified as produced from the SKAQ merchandise.

However, while the core premise of the identification procedure of C.S.D. 83-54 and the producibility doctrine in petroleum drawback refining is the same, the *application* of producibility in manufacturing drawback is fundamentally different from the application of the procedure indisputably called for under the ruling.

Because the producibility principle is dependent upon manufacturing, it operates, in practice, on the basis of discrete manufacturing abstract periods (monthly) (ignoring the use of nondrawback material in each period). Manufacturing periods in drawback, however, are, by definition, inextricably related to manufacturing, and, as such, they would be inherently inapplicable to the ruling, inasmuch as it is concerned broadly with the identification of commingled inventories, and not per se with manufacturing.

To elaborate briefly, the monthly manufacturing period functions, for petroleum drawback identification purposes, as a closed system, separate and distinct from every other monthly period (see T.D. 84-49(5)). Hence, exported goods may only be identified as produced from SKAQ merchandise which is used during the particular period in which the goods are produced; and this identification may be effected regardless of when during the month the goods are produced or the merchandise used. The fact that other (duty-paid) SKAQ merchandise is designated as a basis for drawback on such goods, when it is received and used in a prior period and at a different refinery, is owing to the substitution provision of section 1313(b) (see T.D. 84-49(3)). But the procedure advanced in C.S.D. 83-54 is strictly one of identification.

Accordingly, if the monthly period, as described, were to be extended to the procedure adopted in C.S.D. 83-54, qualified withdrawals from storage in a given month could only be identified—and thereby claimed—for drawback against drawback products placed into storage during that month; and, in so doing, products withdrawn, for instance, on the first of the month could be identified and claimed against drawback products even though they are not received into storage until the last day of the month. Such an approach to identification under the circumstances of the ruling would be patently absurd, would run contrary both to it and to existing law, and could not be approved thereunder (*cf.*, *e.g.*, *Asahi Chemical Industry Co.* v. *United States*, 4 CIT 120, 128 (1982)). While the policy of the drawback law, generally to promote export and/or manufacture, should be fostered, this may appropriately be done only within the framework of the law itself, and should not induce strained an illogical constructions thereof (see, *e.g.*, *Joseph Schlitz Brewing Co.* v. *United States*, 181 U.S. 584, 589 (1901)).

It must be remembered that the identification principle approved in C.S.D. 83-54 is defined by the totality of the requirements contained therein—in particular, that the merchandise be commingled, as already noted, and, directly concomitant with this, that drawback be limited to that "which would be available under the method of separate storage and specific identification" of the drawback products. These requirements would indeed be rendered meaningless if Customs were to accept the use of a "30-day accounting period," or any construction of the ruling which ignored nondrawback withdrawals from storage, (Ignoring nondrawback withdrawals from storage ignores the impact of such withdrawals on available drawback input.) The ruling must naturally be viewed as a consistent entirety in such a manner that each of its elements is given just and proper effect (*cf.*, *Colautti* v. *Franklin*, 439 U.S. 379, 392 (1979)).

It has been further determined that the identification procedures instituted in C.S.D. 83–54, as illustrated, and in C.S.D. 84-82 and C.S.D. 82–35, *supra*, represent the broadest lawful exercise of administrative discretion currently possible under section 1313. The procedures in C.S.D. 84–82 and C.S.D. 82–35 are similarly circumscribed (see Headquarters letter dated September 12, 1985, *supra*).

(2) The claimant is of the opinion that a product, in order to be recognized as a "drawback product" after its delivery from the manufacturer, need not be referenced by a certificate of manufacture and delivery. In support of this, the claimant cites 19 CFR 191.2(g) which defines a "drawback product" "as a finished or partially finished product manufactured in the United States under a drawback contract." The claimant's position is that as long as it can prove that the product it receives was manufactured by a party operating under a drawback contract, *i.e.*, that the manufacturer included the product on an abstract of its manufacturing records, this should be sufficient; a certificate of manufacture and delivery would not be needed.

The claimant's citation to section 191.2(g) is incomplete. This regulation also confirms that a critical feature of a "drawback product" is that it "may be exported with a claim for drawback * * *," but, under the circumstances, this could not occur without its being associated with a certificate of manufacture and delivery.

In this respect, it should be observed that the "drawback contract" referred to in section 191.2(g) consists of both a "drawback proposal" and a "drawback acceptance" of the proposal by Customs (19 CFR 191.2(c)(d)(e)). Section 191.2(c) defines a "drawback proposal" as containing "an offer to operate under the drawback law and regulations." These regulations stipulate, in 19 CFR 191.66(a), that, for drawback purposes, the claimant, whether the manufacturer itself or the exporter, must file with Customs a certificate of manufacture and delivery in relation to the product delivered. Such a certificate is essential in order legally to establish the identity of the product delivered as a "drawback product." In the alternative, it is well settled that a product delivered from the manufacturer, for which a certificate of manufacture and delivery is not given, is considered as a nondrawback product (see, *e.g.*, Bureau letter dated May 20, 1966).

Holdings:

(1) Products stored in different tanks at a tank storage facility are not commingled for drawback purposes under C.S.D. 83-54. Nondrawback withdrawals from commingled storage must be taken into account in implementing the ruling. In this regard, the correct application of C.S.D. 83–54 is illustrated in the August 12, 1983, addendum hereof.

(2) In order to be recognized as a "drawback product" after delivery from the manufacturer, the product must be covered by a certificate of manufacture and delivery.

Attachment.

The following is a full text copy of Office of Regulations and Rulings Headquarters Ruling 215762 of August 12, 1983.

Date: August 12, 1983
File: DRA-1-09-CO:R:CD:D
215762 RB

This is in reference to your letter dated March 23, 1983, file 552–01, with enclosure, wherein you inquire as to the specific operation of the identification procedure approved in Headquarters letter dated March 4, 1983, file DRA-1-09-CO:R:CD:D 215570 RB, "whereby fungible products commingled in storage and withdrawn therefrom for drawback purposes may be identified against the drawback products *commingled therein* in the order of their receipt into storage" (emphasis added).

This means of course that to the extent inventory records indicate the presence of certain drawback input commingled in storage, withdrawals for drawback purposes may properly be credited against such input in the order of its receipt into storage.

Consequently, in establishing under this procedure whether and to what extent certain drawback input exists in commingled storage against which withdrawals for drawback may be charged, inventory records must be maintained showing the total fungible input commingled in storage, the total drawback input commingled therein, the date of such commingling, the date on which each withdrawal is made, and the quantity withdrawn.

Thus structured, this method assures no greater drawback "than that which would be available under the method of separate storage and specific identification."

The actual operation of this method is illustrated below;

Lot No.	Date placed in storage	Quantity	[illegible]
1	March 1	100000 (gallons)	.03
2	March 10	60000	.0
3	March 12	25000	.035
4	March 25	20000	.0
5	March 28	60000	.04
6	March 30	25000	.03

Withdrawals are made on the following dates for drawback purposes or for nondrawback purposes, as hereinafter noted: March 2, 30000 gallons for drawback; March 5, 50000 gallons for nondrawback; March 11, 30000 gallons for drawback; March 13, 30000 gallons for drawback; March 26, 15000 gallons for nondrawback; March 29, 50000 gallons for drawback; March 31, 20000 gallons for drawback.

Drawback identification under this method would be as follows: the March 2 drawback withdrawal of 30000 gallons would be credited against drawback lot No. 1 (70000 gallons remain in storage, all of it from drawback lot No. 1); the March 5 nondrawback withdrawal reduces the total fungible (and also the drawback) input by 50000 gallons (20000 gallons remain in storage, all of it from drawback lot No. 1); the March 11 drawback withdrawal of 30000 gallons is credited against drawback lot No. 1 for its remaining 20000 gallons, the excess 10000 gallons further reducing the total fungible input accordingly (60000 gallons remain in storage, none for drawback); the March 13 drawback withdrawal of 30000 gallons is credited against drawback lot No. 3 for 25000 gallons, the excess 5000 gallons further reducing the total fungible input accordingly (45000 gallons remain in storage, none for drawback); the March 26 nondrawback withdrawal reduces the total fungible input by 15000 gallons (50000 gallons remain in storage; none for drawback); the March 29 drawback withdrawal of 50000 gallons is credited against drawback lot No. 5 (60000 gallons remain in storage, including 10000 gallons from drawback lot No. 5); the March 31 drawback withdrawal of 20000 gallons is credited against drawback lot No. 5 for its remaining 10000 gallons drawback lot No. 6 for 10000 gallons (65000 gallons remain in storage, including 15000 gallons from drawback lot No. 6).

Please be governed accordingly.

(C.S.D. 88-2)

This ruling holds that 19 U.S.C. 1520(d) does not authorize the Customs Service to pay interest on a drawback claim that was disallowed but later allowed as the result of a protest under 19 U.S.C. 1514.

Date: November 9, 1987
File: DRA-1-CO:R:C:D:D
218872K

Issue:

Whether the Customs Service is authorized under 19 U.S.C. 1520(d) to pay interest on a drawback payment after a protest is allowed.

Facts:

Drawback is allowed (payable) or not allowed upon the liquidation of a drawback entry. However, section 191.72 of the Customs Regulations (19 CFR 191.72) provides for an accelerated payment procedure upon the approval of the appropriate Customs official. The drawback claimant posts a bond and receives the accelerated payment on the basis of the drawback entry prior to liquidation of the entry.

A manufacturing drawback claimant received a payment under the accelerated payment procedure. At a later date, the drawback entry was liquidated with a disallowance of drawback and the claimant returned the accelerated payment upon demand by the Customs Service. The drawback claimant filed a protest under 19 U.S.C. 1514 which was allowed and the drawback payment was authorized.

The claimant cites 19 U.S.C. 1520(d) as authority for the payment of interest from the date the accelerated payment was returned to Customs by the claimant to the date of repayment authorized by the allowance of the protest. The claimant states that it is obvious that Customs must pay such interest since, under 19 U.S.C. 1505(c), Customs bills for interest when a bill for overpayment of accelerated drawback is not timely paid.

Law and Analysis:

Sections (a) and (b) of 19 U.S.C. 1505 require that an importer deposit the amount of duties estimated by Customs to be due at the time imported merchandise is entered or withdrawn from warehouse for consumption and upon liquidation Customs shall collect any increased or additional duties due or refund any excess duties deposited.

Sections (a), (b), and (c) of 19 U.S.C. 1520, generally provide for refunds in excess of duties and other charges deposited and refunds due to clerical errors.

STATEMENT OF THE HONORABLE LES AuCOIN
BEFORE THE HOUSE WAYS AND MEANS SUBCOMMITTEE ON OVERSIGHT & INVESTIGATIONS
AUGUST 9, 1988

Thank you, Mr. Chairman.

I appreciate this opportunity to share with you my thoughts on the service provided by the U.S. Customs Service in the Pacific Northwest.

When you consider their limited resources and expansive mandate, the Customs Service clearly has done a commendable job over the years. But I'd like to raise one issue with the subcommittee that is of great concern to the Oregon trade community -- the lack of uniformity of decisions between individual customs offices.

Whether they are classifying products, assessing duties, implementing marking requirements, or enforcing the copyright and trademark laws, the Customs Service needs some flexibility to accomodate local concerns and conditions. The last thing we want to do is put a straightjacket on its ability to keep commodities flowing in and out of our ports.

The evidence I have, however, shows that some customs decisions have become so flexible that they actually contradict decisions made in other offices. This is especially true in the classification area.

When different customs offices give different decisions on how an item should be classified, U.S. importers have two options:

- They can accept the decision of the local customs office. But this could put them at a disadvantage with competitors who are using a different port;

- Or, they can do what any educated consumer would do - they can look around for the best deal. This practice is otherwise known as "port shopping".

Port shopping is illegal. But it occurs regularly in the Pacific Northwest. A recent Booz Allen report found that 70% of west coast customs' brokers agreed that port shopping does actually occur.

Obviously, you won't get anyone to talk publicly about this issue. That makes it difficult to quantify the exact economic damage incurred by port shopping.

But one thing is clear. Importers who look for a better deal at another port operate less efficiently then they would otherwise. And the cost of this inefficiency is lost jobs in the ports from which the cargo was diverted, and increased costs to the consumer.

Mr. Chairman, I'd like to share with the subcommittee two cases that recently occurred in my state which demonstrate the problems contradictory customs' decisions can cause for a company:

The first case deals with a small start-up company in Astoria, Oregon called Premarq. Premarq makes miniature hammocks called "Teddy Beds" that are used to hold children's stuffed animals.

For several years, Premarq imported the netting for these hammocks from Korea into the Port of Seattle. The customs office in Seattle always classified this product as, quote, fish netting, en quote. There is no quota on fish netting from Korea.

Last September, Premarq decided to start importing the same product into the Port of Portland. When the first shipment of 40,000 pounds of netting arrived at the docks, the Portland Customs office classified the product as, quote, ornamental netting, enquote instead of fish netting. Ornamental netting, however, is subject to a quota, and the quota had already been filled. Customs immediately impounded the shipment.

Premarq needed this netting to fill 1.5 million dollars in orders for Teddy Beds from several large, national companies. All of a sudden, Premarq was faced with the prospect of not being able to fill that order - all because Portland gave the product a different classification than Seattle.

The netting sat on the docks for several weeks while an appeal of the decision made its way at the usual snail's pace through the bureacracy. Meanwhile, with Premarq's economic lifeline sitting in a warehouse, its economic situation started to deteriorate. Within a few weeks, it had to lay off 12 full-time employees and stop work for 15 others who work at home. When they finally called me for help, the company was within one week of shutting down its operation and moving to Mexico.

Eventually, after repeated intervention from me and my staff, the Portland customs office decided to reclassify the product as fish netting. Premarq took possession of their property. But, by then, a lot of damage had been done.

Several residents of the small community of Astoria had been put out of work for several weeks. Premarq's reputation as a reliable source had been impaired. Thousands of dollars had been lost because of storage costs. And the company's owners and remaining employees had been needlessly put through mental anguish while awaiting word from some bureaucrat in Washington, D.C.

All this because this company naively thought that the U.S. government spoke with one voice.

Let me cite another example.

Last year, a company in my district called Textile Brokers, Incorporated discovered an attractive dish cloth product that they thought could be a big seller in the United States. The product is made in Korea.

The company contacted KOLTRA, the Korean trade agency, and learned that for years the product had been brought into the Los Angeles customs district by another company, and had been classified by that office as quote, toy furs, en quote. Toy furs are not subject to a quota.

After confirming this information with the Los Angeles customs office, Textile Brokers lined up $50,000 in orders for this cloth. They projected hundreds of thousands of dollars in future orders.

Their big mistake, however, was bringing the 7,000 pieces of the cloth into Portland. That's because when they arrived in Portland, they classified the cloth as quote, dish towels, en quote. Dish towels are subject to a quota and the quota had been reached.

The shipment was seized and put into storage. While the importer tried to resolve the issue, he had to pay thousands of dollars in storage fees.

Eventually, Textile Brokers Incorporated lost their appeal and had to ship the product back to Korea. They had to pay $1,000 in shipping costs. And, of course, they lost the $50,000 in orders and who knows how much in future orders.

The irony is that this same product is still being classified in Los Angeles as toy furs.

Mr. Chairman, I am not asking for head to roll at any Customs office. What I am just asking for uniform treatment throughout the country.

Without uniform decision making, everyone loses:

The ports that are in stiff competition for cargo lose because they are left to wonder why the importer has chosen to utilize another port:

Consumers lose because they wind up paying for the inefficient cargo diversion;

And the U.S. taxpayers and Treasury lose because of the revenue lost as a result of importers getting the lowest customs duty.

Mr. Chairman, I want to thank you again for this opportunity. I'd like to offer my assistance to you and your subcommittee in crafting some kind of solution to this problem.

TESTIMONY OF JOHN F. DIX
GROUP VICE PRESIDENT, DESSERTS & BEVERAGES
BORDEN, INC.
OCTOBER 3, 1988

My name is John F. Dix. I am Group Vice President of the Desserts and Beverages Division of Borden, Inc. I appreciate the opportunity to present testimony to the Subcommittee on Oversight concerning the Customs Service's failure to enforce effectively the dairy quotas applicable to imports of sweetened condensed milk and sweetened condensed filled milk.

Borden, Inc. is a domestic manufacturer of sweetened condensed milk products. We have become concerned by rising illegal imports of these products over the past several years. Borden has repeatedly urged the Customs Service to enforce the dairy quotas vigorously. Although Customs personnel in Washington, D.C. have expressed concern, illegal imports of sweetened condensed milk products continue to enter the country in large quantities to the detriment of U.S. manufacturers and U.S. dairy farms.

I. BACKGROUND

Sweetened condensed milk is a food preparation that consists of nonfat milk solids, sugar and butterfat. Sweetened condensed filled milk ("filled milk") is identical to sweetened condensed milk, except that filled milk replaces the butterfat found in sweetened condensed milk with vegetable oil. The two products are used in many American homes for baking and other purposes. They are largely interchangeable and compete for the same customers. Imports of sweetened condensed milk and filled milk generally have a substantial price advantage over U.S. manufactured products because of various subsidies provided by foreign governments and the high cost of U.S. sugar compared to the world price.

For years, all of the sweetened condensed milk and filled milk used in the United States was either (1) imported subject to limited quotas applicable primarily to Canada, the Netherlands, Denmark and Australia or (2) manufactured here with milk from dairy farms located in Pennsylvania, New York, Louisiana, Wisconsin, Mississippi, Arkansas, Missouri, Oklahoma, Kansas and Kentucky. Plants producing these products are located in Mississippi, Pennsylvania and Illinois. We estimate that in 1987, U.S. manufacturers produced approximately 75 million pounds of sweetened condensed milk and filled milk. About 150 million pounds of raw and concentrated skim milk from U.S. dairy farms were utilized to make these products.

Recently, however, substantial imports of sweetened condensed milk and filled milk from the Far East and certain Third World countries have become common even though such imports are contrary to existing dairy quotas. According to data from the Journal of Commerce, in 1987, approximately 1,250,000 pounds of sweetened condensed milk and filled milk were imported into the country contrary to existing quotas. We estimate that substantial additional quantities of these products also were smuggled into this country. While it is impossible to quantify these smuggled imports, we see them in the market and believe that they could total three quarters of a million pounds. As a result, we believe that total illegal imports of these products are approximately 2 million pounds which is equivalent to about 4.5 million pounds of farm fluid milk, or about 2-3 percent of the U.S. market for sweetened condensed milk and filled milk.

Illegal imports pose a serious threat to U.S. manufacturers and the U.S. dairy farmers that supply them. Since late 1984 or early 1985, these imports have grown steadily while overall sales in the U.S. market have remained stable. As a result, imports have displaced U.S. products and could capture a much larger percentage of the U.S. market in the next few years if the dairy quotas are not enforced. Because Borden, Inc. believes that the Customs Service is not enforcing the dairy quotas properly, we are concerned that the adverse impact of these illegal imports on the domestic dairy industry will continue to grow in the future.

II. SWEETENED CONDENSED MILK

Imports of sweetened condensed milk are classified in TSUSA 115.35 and are subject to the quotas set forth in TSUSA 949.90. These quotas strictly limit importation of sweetened condensed milk from the Netherlands, Canada, Denmark and Australia except that imports from all other countries may total 8,000 pounds annually.[1]

Despite the quotas applicable to this product, in 1987, Borden, Inc. observed imports of "La Lechera" sweetened condensed milk from Mexico in markets in the Los Angeles area alone that far exceeded the 8,000 pound "other country" quota. Data supplied by the Customs Service showed that in 1987 only 90 pounds were recorded as having been imported under the "other country" quota. Similarly, Borden, Inc. saw quantities of "Omela" sweetened condensed milk from Holland far in excess of the 338,000 pound quota from the Netherlands. Borden, Inc. also observed large quantities of sweetened condensed milk, using counterfeit versions of its EAGLE BRAND logo, which had been imported from the Far East. Because imports of sweetened condensed milk have far exceeded the annual quotas, we believe that this product is being smuggled or being allowed into the United States by the Customs Service without regard to the dairy quotas.

In response to these illegal imports, Borden, Inc. brought suit in July, 1987, in the United States District Court for the Central District of California for trademark infringement, false designation of origin, and violation of the Racketeer Influenced Corrupt Organization Act of 1970. Borden, Inc. named as defendants more than 60 Los Angeles markets that handled the milk suspected of having been smuggled. Borden, Inc. v. O.L. Trading, Civ. Act. No. 87-04713 JS (GX). On August 3, 1987, the court issued a preliminary injunction prohibiting further sale of sweetened condensed milk infringing Borden's trademark by some of these defendants. This lawsuit is still pending, and it has to some extent reduced the sale of illegal imports of sweetened condensed milk products in the Los Angeles area. Unfortunately, this suit has had no impact on other areas of the country, and it is extremely expensive and time consuming for one company to challenge the sale of illegal products that never should have been imported in the first place.

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[1] The annual quota, in pounds, for imports of sweetened condensed milk from each specified country is as follows: the Netherlands - 338,000; Canada - 2,192,000; Denmark - 1,334,000; and Australia - 202,000.

To further stem such illegal imports, Borden, Inc. provided detailed information to the Customs Service concerning these products, including the names of brands suspected to have been smuggled and the names of the importers or distributors of these products. We urged the Customs Service to use the information we provided to target future shipments by those importers. To date, we do not believe that the Service has targeted such shipments.

Despite our efforts, sweetened condensed milk continues to enter the country in excess of quota limits. For example, as recently as April 1988, Borden observed large quantities of "Dutch Lady" brand sweetened condensed milk from the Netherlands on the shelves of markets in the Miami area. The 1988 Netherlands sweetened condensed milk quota was filled in early January. Based on import reports, "Dutch Lady" was not among the products imported in late 1987/early 1988 when the Netherlands quota was filled. As a result, the appearance in the marketplace of large quantities of this product after the quotas had filled suggests that it entered the country illegally.

The fact that milk products are being imported in violation of the dairy quotas also was demonstrated by a 45-day "food blitz" in the Los Angeles area conducted by the Customs Service, the Department of Agriculture, and the Food and Drug Administration. According to the July, 1988 FDA Consumer, all foods shipped through Terminal Island, California between December 1, 1987 and January 15, 1988, to importers with high rates of illegal shipments were inspected. Among the violators Customs inspectors found 61 cartons of Nestle Creme, an evaporated milk product shipped from the Philippines, that had not been declared. The shipment had been included in a 40 foot container without any invoice.[2] The "food blitz" revealed widespread smuggling activities; Borden, Inc. believes that large quantities of sweetened condensed milk and filled milk are imported in this manner.

III. SWEETENED CONDENSED FILLED MILK

Under the existing tariff schedules, filled milk is classified in TSUSA 118.30 if it is in "chief value" milk. In that case, it is subject to a restrictive annual dairy quota of 6,000 pounds under TSUSA 950.11. If filled milk is in "chief value" sugar, it is classified in TSUSA 183.05 and not subject to any quotas. The "chief value" test requires the Customs Service to determine the component of highest value in each shipment of filled milk. Because both the cost and quantity of each component varies, each shipment must be separately examined. This has posed an administrative burden that the Service has been unable to meet.

Under the existing TSUSA, importers have avoided the dairy quotas by declaring their product to be in chief value sugar. In some cases, importers falsely labelled the product as "sweetened condensed milk" after importing the product as filled milk. Borden brought both practices to the attention of the Customs Service, and asked Customs to take steps to ensure strict enforcement of the quotas. To date, we have not been informed of the seizure of any shipment of filled milk based on the information we supplied.

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[2] Like sweetened condensed milk, evaporated milk imports are classified in an item that is subject to dairy quotas.

We also presented the Customs Service with evidence that district Customs officers had improperly admitted shipments of filled milk without determining whether the product was in chief value milk or sugar. However, as I will describe, repeated attempts to get the Customs Service to confirm whether such shipments were improperly released, including Freedom of Information Act requests, have been blocked by the Service.

For example, in early 1988 Borden, Inc. learned that a large quantity of filled milk was being imported from Thailand. Because we had a team of dairy experts in Thailand during the summer of 1987 investigating the manufacture of this product, we were convinced that these imports were subject to the dairy quotas and should not be allowed. We provided the Service with information concerning the cost of the components in Thailand based on our 1987 research, which in our view demonstrated that this product was in chief value milk and subject to the dairy quotas. In response to this information, we were informed by John Durant, Acting Director, Commercial Rulings Division, that shipments from Thailand were under investigation and would not be released until a chief value investigation was completed. This representation was repeated in a letter from Jerry Laderberg, Acting Director of the Customs Service's Field Operations Division dated April 20, 1988, in which we were informed that "[i]t is Customs position that shipments of sweetened condensed filled milk entered under 183.05, TSUSA, will not be released until the chief value issue has been settled."

Given these representations, we were surprised to learn from import reports that three shipments of filled milk from Thailand of 237,213 pounds each were offered for entry at the port of Oakland, California in February and March 1988, and apparently were marketed soon thereafter. Although the particular brand of milk was not identified in the reports, we believe that all three shipments were "Mali Brand Sweetened Condensed Milk Substitute Containing Vegetable Oil" because "Mali Brand" from Thailand appeared on the shelves of markets in the California area shortly after the three identified shipments were offered for entry.

Borden's belief that this milk had been allowed entry by the Customs Service without following the representations made to us by Messrs. Durant and Laderberg was buttressed by an Entry/Immediate Delivery record releasing a shipment of 4,825 cartons (the equivalent of 237,213 pounds) of "Mali Milk Substitute" on February 15, 1988. This document was obtained in discovery during the California litigation, and showed that a Customs official, R.E. Peltier, had determined that the shipment was "not quota." Because the weight of the released shipment matched one of the shipments entered in February, it seemed clear in retrospect that the Service had released one of the filled milk shipments that had just been entered. Because a chief value analysis is time consuming, we concluded that the rapid release of this shipment must have been accomplished without conducting the chief value analysis to which the Service had committed itself.

We attempted to confirm whether these shipments had in fact been released, and if so, whether a satisfactory chief value analysis had been completed before their release. It was our understanding that the Customs Service was still obtaining and evaluating component cost information and that, therefore, the February and March shipments should not have been released. Customs responded to our inquiry with a letter dated June 23, 1988, which stated that "Customs continues to adhere to [its] original position" that shipments of filled milk will not be released until the chief value issue is settled. At the same time, it failed to answer our question as to whether the identified shipments had been released.

On July 12, 1988, we again wrote to Customs, this time enclosing a copy of the entry record showing that 4,825 cartons of "Mali Milk Substitute" were admitted as "not quota". We again asked the Service to confirm that filled milk imports were being held until a chief value analysis was completed. In a letter dated August 24, 1988, the Service confirmed that the February shipment was released based upon the importer's documentation and without an independent chief value analysis. This, of course, was contrary to the policy the Service had itself announced. Moreover, the Service did not indicate whether other shipments of filled milk had been released.

Because the Service refused to respond directly to our inquiries, Borden, Inc. filed three Freedom of Information Act requests concerning six shipments of filled milk from Thailand offered for entry at the ports of Los Angeles, Norfolk, and New York. In each case, we requested only limited information concerning whether the imports had been allowed. We filed these FOIA requests with each of the appropriate regional offices. All of these requests were denied, and to date we have been unable to learn whether these shipments were admitted and whether a chief value analysis was performed.

In short, we have given the Customs Service ample information with which to investigate whether particular shipments of filled milk have been released contrary to Customs Service policy without a proper chief value analysis being performed. The Service, however, has failed to answer our questions concerning any of the shipments we have identified. Thus, we are uncertain as to whether the Service is following its announced policy, and this raises a serious question concerning Customs' commitment to enforcement of the dairy quotas.

When the Harmonized System is implemented in January, 1989, imports of filled milk will be subject to a new classification procedure that should avoid the need to conduct a chief value analysis for each shipment. The Harmonized System replaces the "chief value" test with the "essential character" test, which does not require the determination of the value of individual components. On December 7, 1987, the Service ruled that the "essential character" of filled milk under the Harmonized System is milk. As a result, it stated that when filled milk is imported under the new classification, it will be identified as an article of milk in USTSA 1901.90.30 subject to an annual dairy quota of approximately 6,000 pounds in item 9904.10.60.[3]

The implementation of the Harmonized System which eliminates the chief value test should result in a severe curtailment of imports of filled milk. However, the failure of the Service to enforce the dairy quotas in the past, and the prevalence of smuggling, makes us very concerned that the adoption of the Harmonized System will not resolve this problem. In short, without vigorous enforcement by the Customs Service, this problem will not go away.

IV. CONCLUSION

We urge Congress to instruct the Customs Service to enforce the dairy quotas more vigorously. The current lack of vigorous enforcement is harming U.S. dairy farmers and manufacturers of sweetened condensed milk products.

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[3] During the Senate's consideration of the Conference Report to the Trade Bill last spring, Senator Bentsen and Senator Heinz supported the Service's interpretation of the Harmonized System. Senator Heinz asked Senator Bentsen whether Congress intended that filled milk be classified as subject to the dairy quotas, and Senator Bentsen responded by stating: "The Senator from Pennsylvania is correct. It is our intention that filled milk be classified as he has indicated. This is consistent with the Customs Service's position on this subject." 134 Cong. Rec. S4901-4902 (April 27, 1988).

STATEMENT OF DANIEL O. PEGG
CHAIRMAN, BORDER TRADE ALLIANCE

BEFORE THE SUBCOMMITTEE ON OVERSIGHT,
COMMITTEE ON WAYS & MEANS, U.S. HOUSE OF REPRESENTATIVES

Dear Mr. Chairman:

This Committee deserves commendation for turning an examining eye to the subject of U.S. Customs' commercial operations and administration of the trade laws along the U.S./Mexican border. Given the growing importance of bilateral trade between the United States and Mexico, totalling over $35 billion in 1987 ($20 billion corresponding to Mexican exports and 15 to U.S. exports), your investigative hearings are both timely and beneficial.

As Chairman of the Border Trade Alliance (BTA), a grass roots organization representing 17 United States border communities and 4 border states, I have become well acquainted with the need to streamline customs policies and procedures which facilitate trade between the U.S. and Mexico yet allows for necessary narcotics enforcement. This is particularly important given the enormous growth of the maquiladora industry along the U.S./Mexico border. With over 1,500 maquiladoras, the industry has proven to be a vital link to the economic stability of the border region. Understandably the explosive growth along the U.S./Mexico border has created the need for better enforcement at all border ports of entry.

Given the increased flow of narcotics coming from Mexico and the need for tougher drug interdiction, the job of the U.S. Customs Service in inspecting cross-border commercial shipments has not been easy. Nevertheless, through Customs' hard work, tremendous strides have been made in alleviating bottlenecks along the border. Such efforts have included: increased staffing and hours of service at border ports of entry; and construction of new facilities and renovation of existing ones.

Through the leadership of Assistant Commissioner Samuel Banks, the U.S. Customs Service has made great progress in opening up dialog with the Mexican Customs (Aduanas). The progress he and his staff have made with Mexican Customs was evidenced last July when the customs services of both the United States and Mexico met in San Diego to approve the U.S./Mexico Maquiladora Initiative. This pilot program permits U.S. Customs officials to periodically conduct security checks at maquiladora operations in Mexico, thereby allowing participating companies to have their shipments pre-approved by U.S. Customs. The pilot program now underway in Matamoros/Brownsville and Cuidad Juarez/El Paso is aimed at facilitating the flow of commercial traffic while maintaining Customs' desired drug enforcement efforts.

Other cooperative efforts agreed to by U.S. and Mexican Customs Services' at the San Diego summit meeting included:

- Establishment of an Automated Cross-Border Information Exchange;
- Joint U.S./Mexico training efforts of Customs Staff
- Special Lanes for Mexican Exports
- Joint Training of the Harmonized System
- Better Coordination Between the U.S. and Mexico on Hours of Service at Border Ports of Entry.

Never before has the border business community witnessed such a willingness by U.S. Customs to facilitate cross-border commerce. Furthermore, this is the first time that I have personally seen the customs services of both the U.S. and Mexico work so closely together. Your committee should be reminded, however, that while these efforts exist in spirit, they are limited by the level of funding provided by the General Services Administration. Given the importance of trade between the U.S. and Mexico continued funding for border commercial facilities should be a top priority of the 101st Congress.

While problems with commercial border delays persist, the U.S. Customs Service should be commended on all that it has done for the communities along the Southwest border. After all, bilateral trade between the United States and Mexico is the lifeblood of these border communities.

On behalf of the Border Trade Alliance, I want to thank this committee for its efforts in examining the need for improved U.S. Customs commercial operations. I offer you and your Committee my full cooperation in this effort.

Chevron

Chevron U.S.A. Inc.
575 Market Street, San Francisco, CA 94105

G. K. Carter
Vice-President
Finance

October 27, 1988

The Honorable J. J. Pickle
Chairman, Subcommittee on Oversight
Committee on Ways and Means
U. S. House of Representatives
Room 1105, Longworth House Office Building
Washington, D. C. 20515

Dear Chairman Pickle:

On behalf of Chevron U.S.A. Inc., I would like to thank you for the opportunity, pursuant to your Press Release Number 27, to submit our comments and concerns regarding the operations and activities of the U. S. Customs Service, in particular the drawback program. I request that our comments be included in the written record of the hearings.

Drawback is a program that allows companies that import raw materials and transform them into products for subsequent export to get a refund of most of the import duty originally paid. The purpose of duty drawback is to assist industries to compete in foreign markets and to increase U. S. exports. As a substantial importer and exporter, Chevron U.S.A. is directly affected by the decisions and administrative procedures established by Customs. In the past, our working relationships have been excellent. However, in the last several years these relationships have suffered as a result of what appears to us to be an anti-trade attitude on the part of Customs that impairs the ability of certain U. S. manufacturers such as Chevron to compete effectively in export markets.

Our primary concern is the publication in 1988 of Customs Service Decision (C.S.D.) 88-1 concerning import duty drawback. This final ruling, in our opinion, is unreasonable in its interpretation and overturns a long-standing practice previously supported by Customs. This practice of using a monthly, tank-farm accounting method is the most cost effective means of administering drawback for the claimant and probably for Customs. C.S.D. 88-1, however, creates the requirement that "commingled" inventories be accounted for on a daily, tank-by-tank basis and would sharply limit duty drawback claims for a number of industries, including the petroleum industry. Moreover, this ruling enormously increases the complexity and administrative burden of preparing drawback claims.

In an era of huge U. S. trade deficits, C.S.D. 88-1 seems particularly inappropriate, as it lessens the ability of U. S. exporters to compete in foreign markets, particularly in jet fuel markets. As an illustration, airlines destined for foreign ports may increase the use of bonded jet fuel, which has no import duty, rather than purchasing domestic jet fuel.

I am particularly concerned that C.S.D. 88-1 is being applied retroactively by Customs. This works to the detriment of exporters such as Chevron who in good faith have complied with the previous procedures endorsed by Customs and who, as a result, do not have the records now required by C.S.D. 88-1 to claim drawback for periods not yet liquidated. It has previously been the practice of Customs to follow the "piggyback" principle of record keeping that states, "We do not require an applicant to maintain special records for drawback if records it (the applicant) maintains for another purpose will do the job. Thus records it is required to keep for Internal Revenue may establish all the documentation it needs to prove exportation. If so it need not keep another set of records for drawback. In drawback we will piggyback." (U. S. Customs November 1982 Seminar.) Under this "piggyback" principle, our existing records sufficed for drawback purposes. C.S.D. 88-1 now requires a separate and extraordinarily detailed set of record-keeping procedures.

In our view, the effect of C.S.D. 88-1 is clearly at variance with the Congressional intent to encourage U. S. exports by payment of import duty drawback. C.S.D. 88-1 has the following impacts on Chevron: 1) its retroactive application effectively precludes Chevron from claiming drawback on certain past exports; and 2) it prospectively requires Chevron to discontinue filing claims on certain activities for which, as a practical matter, the documentation cannot be prepared as now required.

I realize I have given you only a synopsis of the problem C.S.D. 88-1 has created for drawback participants. However, at your request, I will supply a more detailed explanation of the issues discussed in this letter.

I thank you for your interest and would welcome your assistance in helping us to resolve this issue with Customs.

Sincerely,

G. K. Carter / PM

cc: Members of the Subcommittee on Oversight

Dairymen

Dairymen, Inc. General Office
10140 Linn Station Rd., Louisville, Ky. 40223-9990
Phone (502) 426-6455

October 4, 1988

The Honorable J.J. Pickle, Chairman
Subcommittee on Oversight
Committee on Ways and Means
U.S. House of Representatives
1105 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

The 5,900 dairy farmers who own Dairymen, Inc. wish to express our concern about the illegal importation of dairy products such as sweetened condensed milk entering the U.S. market on the West Coast. The illegal importation of this product, and perhaps others, displaces domestically produced milk, increases the cost of Commodity Credit Corporation milk, increases the cost of Commodity Credit Corporation purchases under the dairy price support program, and depresses dairy farmer income through loss of sales and potential reductions in the price support level pursuant to the provisions of the Food Security Act of 1985.

Sweetened condensed milk imports, classified in TSUS 115.35 and subject to the import quotas set forth in TSUS 949.90, provide for limited imports of sweetened condensed milk primarily from the Netherlands, Canada, Denmark, and Australia. The annual quotas of sweetened condensed milk imports for each of these countries are as follows: Netherlands 338,000 pounds; Canada 2,197,000 pounds; Denmark 1,334 pounds; and Australia 202,000 pounds. Imports from other countries are limited to 8,000 pounds per year.

In spite of the limited import quotas, it has been brought to our attention that sweetened condensed milk manufactured in the Netherlands is being imported illegally. Our understanding is that the Netherlands' manufactured product is first shipped to a Far East location and then to the United States in violation of the quota.

It has been estimated that the U.S. market for sweetened condensed milk and sweetened condensed filled milk in 1987 was approximately 75 million pounds. It requires about 150 million pounds of raw and concentrated skim milk from U.S. dairy farms to produce the volume of sweetened condensed milk and filled milk produced domestically by U.S. manufacturers whose plants are located in Mississippi, Pennsylvania, New York, Louisiana, Wisconsin, Arkansas, Missouri, Oklahoma, Kansas and Kentucky.

Imports of sweetened condensed milk and sweetened condensed filled milk, based on The Journal of Commerce PIERS reports, in 1987 totaled 1,250,000 pounds. Illegal imports, it has been estimated, added an additional 750,000 pounds of smuggled products to the market. Thus, total imports amount to approximately 4-5 percent of the U.S. market. Or, put another way, the 2 million pounds of imports are equivalent to approximately 4.5 million pounds of fluid milk.

Given that illegal imports were not noticeable in the domestic market before 1984 or 1985, the penetration of imports to date suggests to manufacturers that they could grow to 25 percent of the U.S. market in a few years if dairy quotas are not rigidly enforced.

Because the market for these and similar products is mature, increased imports displaces domestic production and increases dairy product purchases by the Commodity Credit Corporation during periods of excess production. Should the additional purchases be sufficient to trigger a 50 cent per hundredweight reduction in the support price, dairy farmer income would be reduced by more than $700 million. Thus, we are concerned about the impact of the illegal imports of sweetened condensed milk and other products which may be illegally imported.

When the Harmonized System is implemented in January 1989, imports of sweetened condensed filled milk will be subject to a new classification procedure based on the "essential character" of the product. The Customs Service has determined the "essential character" of sweetened condensed milk to be milk, not sugar. Thus, a curtailment of imports would be expected. However, the prevalence of smuggling has raised the industry's concern that what could not enter through the front door may seek a way through the back door.

We, therefore, ask the Congress to instruct the Customs Service to strengthen the enforcement of U.S. dairy quotas, and be diligent in the exercise of its duties. Without vigorous enforcement by the Customs Service, this problem will not go away.

Sincerely yours,

James W. McDowell

James W. McDowell, Jr.
Executive Vice President and
Chief Executive Officer

JWM:mnd

October 27, 1988

Honorable J.J. Pickle
Chairman
Subcommittee on Oversight
Committee on Ways and Means
U.S. House of Representatives
Longworth House Office Building, Room 1102
Washington, D.C. 20515

Re: Press Release #25
Subcommittee on Oversight
Notice of Review of U.S. Customs Service
August 3, 1988

Dear Chairman Pickle:

The Dry Color Manufacturers' Association (the "DCMA")[1] is pleased to submit comments in response to the above-captioned notice in order to assist the Subcommittee on Oversight in its investigation of the overall operations and activities of the United States Customs Service.

The U.S. Custom Service is charged with the responsibility of monitoring the operations of foreign trade zones and their subzones. (19 CFR 146) As the only arm of the government charged with the responsibility of enforcement, it is of the utmost importance that the U.S. Customs Service fulfill these obligations. If these obligations are not fulfilled, foreign trade zones are left without any check on whether their operations are in compliance with the regulations governing their existence.

The members of the DCMA are particularly interested in U.S. Customs supervision of foreign trade zones and their subzones since the result of poor Customs supervision would be to give the foreign trade zones or subzones thereof an opportunity to obtain an unfair advantage over its competitors in the industry.

It is our conclusion reached from our own investigation that the U.S. Customs Service has not been adequately supervising certain foreign trade zones and their subzones as closely as is required under the regulations.

These comments will demonstrate that short of a U.S. House of Representatives investigation into the operations of the U.S. Customs Service, there is no check on the U.S. Customs Service to determine if it is effectively monitoring foreign trade zones and their subzones. It is evident from the information we have gathered in response to Freedom of Information Act requests, that an interested party has no way to check upon the efficiency of said Customs supervision.

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[1] The Dry Color Manufacturers' Association is an industry trade association representing small, medium and large pigment color manufacturers throughout the United States and Canada, accounting for approximately 95% of the production of color pigments in this country. Foreign pigment manufacturers with sales in the United States and Canada and suppliers of intermediates to the pigments industry are also members of the Association.

Poor Customs supervision of foreign trade zones could have a detrimental economic impact on those companies who have not obtained foreign trade zone status in a given industry. In light of this fact, we recommend that Customs officers conducting an investigation of a foreign trade zone or subzone thereof be required to prepare detailed reports of said investigation, specifically setting forth the investigative methods used to ensure that the foreign trade zone has complied with the regulations governing its existence and all restrictions upon which its approval may have been conditioned. This would provide an interested party reviewing the reports an opportunity to determine for itself whether the U.S. Customs Service was adequately monitoring the foreign trade zone.

Additionally, we recommend that a procedure short of a U.S. House of Representatives investigation should be established to regularly review U.S. Customs supervision of foreign trade zones and their subzones.

In the absence of more detailed reports or such a procedure, it cannot be determined whether the U.S. Customs Service is adequately monitoring foreign trade zones and subzones thereof in accordance with the regulations governing their existence and all restrictions upon which their approval may have been conditioned. Inadequate supervision of foreign trade zones would have a negative economic impact on companies in the pigments industries throughout the United States and on United States suppliers to the pigments industry.

Pursuant to 19 CFR 146, the U.S. Customs Service is authorized to and has the responsibility for supervising the operational and administrative activities of foreign trade zones. Such supervision is to be performed through a periodic audit of the operator records, a physical inventory of zone merchandise, spot checks of transactions or procedures, and a review of recordkeeping, security and conditions of storage in a zone. The U.S. Customs Service is also responsible for monitoring zones to ensure their compliance with any restrictions upon which approval of the zone was conditioned. Additionally, a U.S. Customs district director may cause merchandise to be examined before or at the time of admission to a zone, or at any time thereafter, if the examination is considered necessary to facilitate the proper administration of any law, regulation or instruction which the U.S. Customs Service is authorized to enforce. (19 CFR 146.10)

For purposes of illustration, we shall discuss Customs supervision of the facilities of the Greater Buffalo Press, Inc., a subzone of Foreign Trade Zone No. 23 located in Buffalo, New York.

The Greater Buffalo Press, Inc., the "Subzone", operates ink manufacturing facilities in the towns of Dunkirk and Sheridan, County of Chautauqua, State of New York. The Foreign Trade Zones Board granted the County of Erie's application made on behalf of the Greater Buffalo Press, Inc. to designate its manufacturing facilities in the towns of Dunkirk and Sheridan as a subzone of Foreign Trade Zone No. 23 on May 13, 1986.

The Foreign Trade Zones Board approved the application for Foreign Trade Subzone status for a five year period subject to the following restrictions:

1. The subzone benefit, under which imported pigment used in the manufacture of ink within the Subzone is dutiable at

the lower rates applicable to ink, is only applicable for ink produced for the Subzone's own use;

2. The Subzone must elect privileged foreign or domestic status, as appropriate, with respect to pigment prior to its use in the production of ink to be sold in commercial quantities in the domestic market other than for the Subzone's own use;

3. The Subzone must elect privileged foreign or domestic status, as appropriate, with respect to pigment prior to its use in the production of ink, once shipments of ink containing foreign pigment to the Subzone exceed 21 million pounds on an annual basis;

4. The Subzone will make available to the U.S. Customs Service on request its records, or the records of any of its subsidiaries that relate to the production, shipment, and sale of ink and will post a bond deemed adequate by the Customs Service to protect the revenues. (See Exhibit A.)

According to a United States International Trade Commission Report entitled "The Implications of Foreign Trade Zones for U.S. Industries and for Competitive Conditions Between U.S. and Foreign Firms,"[2] the Greater Buffalo Press, Inc. has been operating at its Sheridan, New York subzone since August 1986.

By letter dated April 20, 1988, we made the attached Freedom of Information Act Request (the "FOIA request") regarding the U.S. Customs inspection and supervision of the manufacturing facilities of the Greater Buffalo Press, Inc. in the towns of Dunkirk and Sheridan. (See Exhibit B). We requested documents and information pertaining to the frequency and extent to which Customs officers have monitored the subzone.

Specifically, we requested all reports, records and documentation pertaining to performing the following: (1) audits of the operator records of the facilities, (2) an examination of merchandise, inventory records and financial records, (3) spotchecks, (4) quantity counts of goods in the facilities' inventory, (5) review of recordkeeping procedures, (6) review of the overall security of the facilities; and (7) review of the storage conditions of the facilities.

In response to the FOIA request, we received the attached spot check reports and information from the U.S. Customs Service by letter dated June 21, 1988. (See Exhibit C). A review of the response to questions posed in the request and documents provided reveals that the Customs officers have inspected the facility in Dunkirk during a spot check on March 16, 1988 and the facility in Sheridan once prior to activation and during spot checks on September 30, 1987, December 17, 1987 and March 16, 1988.

The Customs Officers prepared a spot check report for each visit. According to Customs response to questions posed in the request, the spot check reports of September 30, 1987 and December 17, 1987 only cover the facility in Sheridan. The spot check report of March 16, 1988 covers both the Sheridan and Dunkirk facilities. The U.S. Customs Service could not document the alleged inspection of the facility in Sheridan prior to its activation with a report.

The spot check reports merely state that the following areas of activity in the facility were inspected: access to merchandise and records, admission of merchandise to zone, zone control of attributive method, transfers under weekly entries or permits and security, safety and sanitation. The reports are not detailed regarding the investigative procedures implemented by the Customs officers who conducted the inspection of the listed areas of activity. Additionally, there is no indication in the reports that said Customs officers were aware of the restrictions upon which the approval of the Subzone had been conditioned or that the Subzone had complied with these restrictions.

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[2] THE IMPLICATIONS OF FOREIGN TRADE ZONES FOR U.S. INDUSTRIES AND FOR COMPETITIVE CONDITIONS BETWEEN U.S. AND FOREIGN FIRMS, Inv. No. 332-248, USITC Pub. 2059 (1988).

In the spot check report dated March 16, 1988 which allegedly covers both the inspection of the Dunkirk and Sheridan facilities, the Customs officers failed to differentiate between the facilities. Nowhere in the report is there a reference to the Sheridan facility. Additionally, a review of the spot check reports of September 30, 1987 and December 17, 1987, which allegedly cover only the Sheridan facility according to Customs response to questions posed in the FOIA request, reveals that there is no indication that it was indeed the Sheridan facility that was inspected on said dates.

According to the United States Customs Service as reported in a United States International Trade Commission Report, spot checks of a facility are conducted about three times per year.[3] From the documentation received from the United States Customs Service in response to the FOIA request, it appears that the facility in Dunkirk has been inspected once since its activation in August 1986. It appears that the facility in Sheridan has been inspected a total of three times since activation in August 1986.

Additionally, the documentation received in response to the FOIA request indicates that the U.S. Customs Service has not conducted an audit of the operator records of either the Dunkirk or the Sheridan facility since activation. According to the U.S. Customs Service as reported in the United States International Trade Commission Report, a complete zone audit, which includes an exhaustive examination of merchandise, inventory records and financial records, is conducted every two to three years.[4]

Since there is no indication anywhere in the documents received as to what investigatory procedures were implemented during the spot checks, whether the Customs officers had ever been informed of the restrictions upon which approval of the application for subzone status had been conditioned or whether the subzone had been in compliance with these restrictions, we made a second FOIA request focusing on these particular issues.

Specifically, the second FOIA request dated July 22, 1988 (Exhibit D) requested documents containing the following information: (1) the specific investigative procedures implemented by the Customs officers during the spot checks conducted at the facilities, such as an inspections handbook, (2) whether the facilities had been inspected since March 16, 1988, (3) whether the Customs officers who inspected the facilities were aware of the restrictions upon which the approval of the subzone had been conditioned, (4) whether the subzone had complied with the restrictions, (5) whether a bond deemed adequate by Customs to protect the revenues had been posted; and (6) the procedure used by Customs to determine the adequacy of said bond.

By letter dated September 26, 1988, (Exhibit E), the U.S. Customs Service indicated that the only records it had which were responsive to our FOIA request related to a check of the

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[3] _Id_. p. 2-4.

[4] _Id_.

Sheridan facility prior to its activation, a spot check after March 16, 1988 and records relating to the bond posted by the Subzone. Additionally, the letter requested payment of the research and duplication fee and informed us that we could appeal the partial denial of our FOIA request. It was inconsistent that the letter stated that the U.S. Customs Service would produce all records which were responsive to our request upon payment of the fee. However, at the same time, the letter also indicated that our request was being partially denied, but failed to identify which documents were being denied.

Documents received on October 3, 1988 in response to the second FOIA request (Exhibit F) consist of a letter which refers to a meeting between Mr. Ralph Perri, Customs Import Specialist and Mr. Dan Shea of the Greater Buffalo Press, Inc., a spot check report of the facilities located in Dunkirk and Sheridan, and standard form documents relating to the posting of a bond.

A review of the letter characterized by the U.S. Customs Service as a check of the Sheridan facility prior to its activation reveals that Mr. Ralph Perri, Import Specialist met with Mr. Dan Shea of the Greater Buffalo Press in Dunkirk on August 14, 1985. There is no indication that the facility in Sheridan was inspected at that time. The letter merely states that Mr. Perri toured the proposed facilities while he was in Dunkirk. Additionally, there is no indication which documents, if any, were reviewed in order to determine how the subzone would operate and estimate the Customs manpower that would be involved in the supervision of the Subzone.

The spot check report indicates that Customs officers inspected the facilities in Dunkirk and Sheridan on June 14, 1988. This spot check took place five days after we had delivered by Federal Express a copy of the misdirected FOIA request dated April 20, 1988 to the Office of the Regional Counsel in Boston, Massachusetts and to the Office of the U.S. Customs District Director in Buffalo, New York on June 9, 1988. (See Exhibits B and F). Additionally, the Customs officers clearly indicated in this report, unlike in other spot check reports provided to us by there U.S. Customs Service, that the inspection covered both the Sheridan and Dunkirk facilities.

According to the standard form documents which the U.S. Customs Service provided, the Subzone was required to post a bond in the amount of $100,000 on August 4, 1986. Pursuant to the restriction upon which approval of the Subzone had been conditioned, the amount of the bond must be deemed adequate by the U.S. Customs Service to protect the revenues.

The only document provided by the U.S. Customs Service on the issue of bond sufficiency, is a standard form memorandum dated August 16, 1986 in which a Customs representative checks a box as to whether the amount of the bond is sufficient. In this case, the Customs representative determined that the bond in the amount of $100,000 was sufficient to protect said revenues.

There is no indication in any of the documents relating to the posting of the bond provided by the U.S. Customs Service as to which documents, if any, were reviewed in the course of making this determination of bond sufficiency. Additionally, the documents do not indicate which factors were considered in making the determination.

Moreover, there is no indication of the existence of any procedure for the periodic review by the U.S. Customs Service of the determination as to the sufficiency of the bond posted. The form entitled "Customs Bond" indicates that the bond remains in force for one year beginning with the effective date, in this case August 4, 1986, and for each succeeding annual period thereafter until terminated. There is no indication that the determination of bond sufficiency was reviewed during August 1987 or August 1988 the beginning of a new annual period. In fact, a review of the documents reveal that the only time this issue was even considered was on August 18, 1986, i.e., the date on which the memorandum regarding the sufficiency of the bond was signed by a Customs representative.

Most distressing is the fact that there is no indication in any of the documents that the Subzone has complied with any of the restrictions upon which approval of its application was conditioned other than the posting of a bond to protect revenues. Additionally, there is no evidence indicating whether the Customs officers were ever even informed of these restrictions prior to conducting the spot checks of the Subzone.

In our second FOIA request dated July 22, 1988, we specifically requested documents pertaining to the issues of whether the Subzone complied with these restrictions and whether the Customs officers conducting the spot checks had knowledge of said restrictions. The documents supplied to us in response to the request lacked any information regarding these issues.

On the one hand, the U.S. Customs Service by letter dated September 26, 1988 informed us that it would provide us with all the documents it had which were responsive to the FOIA request. On the other hand, the U.S. Customs Service stated in said letter that it had partially denied our request for disclosure of information.

We have filed an appeal to the Director of the Office of Regulations and Rulings of the U.S. Customs Service to determine whether Customs has documents regarding the issues of whether the Subzone has complied with these restrictions and whether the Customs officers had knowledge of said restrictions.

If such documents exist and are being withheld by the U.S. Customs Service, our position is that these documents do not fall under any of the exemptions to the disclosure requirement listed in 19 CFR 103.12 and must be produced in response to our FOIA request. If these documents do not exist, we have requested written notice informing us of the identity of the documents being withheld and the grounds for nondisclosure.

Pursuant to 19 CFR 103.6, a Customs officer who denies a request for records whether in whole or in part shall mail written notice of the denial to the requester. The letter of notification must contain the following information:

1. the physical location of the requested records;

2. the applicable exemptions and reason for not granting the request;

3. the name and title or position of the Customs officer who denied the request;

4. advice on the right to administrative appeal; and

5. the title and address of the Customs officer who is to decide any appeal.

The U.S. Customs Service has not provided us with information regarding the physical location of the requested records, the applicable exemptions and reason for the partial denial of the request. We expect that these deficiencies will be corrected in response to our appeal.

Additionally, the U.S. Customs Service has not responded to our FOIA requests within the time limitation provided for in 19 CFR 103.6. The time limitation for making an initial determination to grant or deny a request for records, including the time for notifying the requester of that determination is ten days excluding Saturdays, Sundays and legal public holidays after the date of receipt of the request.

We received a response to our FOIA request dated April 20, 1988 on or about June 21, 1988. Telephone inquiries during late May revealed that the U.S. Customs Service could not determine the status of said FOIA request. In order to expedite matters, we forwarded a copy of the request to the Office of Regional Counsel of the U.S. Customs Service in Boston, Massachusetts and to the Office of the District Director of the U.S. Customs Service in Buffalo, New York.

The U.S. Customs Service responded to our FOIA request dated July 22, 1988 by letter dated September 28, 1988 after numerous weekly telephone inquiries to determine the status of our request. In response to each inquiry, the Customs officer would indicate that we would be receiving the response to our request in two weeks. Two and a half months later, the U.S. Customs Service responded to our request for documents. We finally received said documents on October 3, 1988.

Pursuant to 19 CFR 103.8 the Customs officer who is responsible for deciding an initial request for documents may extend the ten day time limitation set in 19 CFR 103.6 after written notice to the requester. This notice must state the reason for the extension and the date on which the determination is expected to be dispatched. Any extension or extensions of time are limited to a cumulative total of not more than ten additional working days.

The U.S. Customs Service did not respond to our FOIA requests within the time limitations set in the regulations. Moreover, written notice for an extension to respond was never issued for either FOIA request.

As previously noted, the U.S. Customs Service is charged with the responsibility of monitoring the operations of foreign trade zones and their subzones. (19 CFR 146) As the only arm of the government charged with the responsibility of enforcement, it is of the utmost importance that the U.S. Customs Service fulfill these obligations. If these obligations are not fulfilled, foreign trade zones are left without any check on whether their operations are in compliance with the regulations governing their existence.

The result of poor Customs supervision would be to give the foreign trade zones or subzones thereof an opportunity to obtain an unfair advantage over its competitors in the industry. Additionally, many of the companies to which the Foreign Trade Zones Board granted foreign trade zone or subzone status, only obtained that status, such as the Greater Buffalo Press, Inc., because said status was conditioned upon specific restrictions. These restrictions were deemed necessary to protect other producers due to the highly competitive nature of the given industry.

Short of a U.S. House of Representatives investigation into the operations of the U.S. Customs Service, there is no check on the U.S. Customs Service to determine if it is efficiently monitoring foreign trade zones and their subzones. An interested party has no way to check upon whether the U.S. Customs Service is effectively monitoring a foreign trade zone or subzone thereof, which if left unchecked may easily obtain an unfair competitive advantage over other companies in the industry.

As a review of the spot check reports we obtained in response to our FOIA requests regarding the Greater Buffalo

Press, Inc. indicated, it is impossible to determine whether a subzone has complied with the restrictions upon which its approval was conditioned or whether the Customs officers were even informed of said restrictions.

We recommend that Customs officers conducting an investigation of a foreign trade zone or subzone thereof be required to prepare detailed reports of said investigation, specifically setting forth the investigative procedures implemented to ensure that the foreign trade zone has complied with each restriction. In this way, an interested party reviewing the reports could easily determine whether the U.S. Customs Service was fulfilling its enforcement obligations.

Additionally, a procedure short of a U.S. House of Representatives investigation should be established to regularly review U.S. Customs supervision of foreign trade zones and their subzones.

The DCMA appreciates this opportunity to participate in your investigation of the U.S. Customs Service and wishes to be of service in any way deemed necessary by the Subcommittee on Oversight.

Respectfully submitted,

J. Lawrence Robinson
Executive Vice President

[EXHIBITS TO THIS STATEMENT ARE BEING MAINTAINED IN THE COMMITTEE FILES.]

STATEMENT OF EMERY AIR FREIGHT CORPORATION

BEFORE THE SUBCOMMITTEE ON OVERSIGHT
COMMITTEE ON WAYS AND MEANS
UNITED STATES HOUSE OF REPRESENTATIVES

Emery Air Freight Corporation (Emery) is the oldest overnight air courier and air cargo transportation system in the United States. Founded in 1946, Emery provides air courier/air cargo services in the U.S. and to some 143 countries and territories, handling shipments of virtually any size, weight or value. Emery's hubs in Dayton, Ohio, and Chicopee, Massachusetts -- as well as its fleet of contractor-operated aircraft and network of surface transportation -- give Emery the ability to provide expedited transportation of time-sensitive international shipments in response to the needs of the U.S. business community. Because Emery operates its own customs broker subsidiary (Emery Customs Brokers), Emery offers shippers and consignees a "closed loop" integrated system including door-to-door service and monitoring of shipments from pickup to delivery.

In announcing these hearings, Chairman Pickle recognized that "the volume of international trade involving the United States has more than doubled" in the last 10 years and that Customs staffing and resource levels have decreased during the same period. As Chairman Pickle said in his opening statement, "We need to know exactly how the Customs Service is responding to [the] new and constantly changing environment. Timely and fair processing of cargo by Customs is important, if not essential, to the continued smooth flow of trade between the United States and our trading partners."

Emery's role as both air express operator and customs broker makes it especially well-qualified to address this question and to comment on how the U.S. Customs Service can best expedite shipment of documents and goods while continuing to fulfill its responsibility to interdict contraband, enforce import/export control regulations, and collect revenues.

EMERY'S ABILITY TO SERVE THE U.S. BUSINESS COMMUNITY

If U.S. businesses are to compete effectively in the international trade arena, they must be able to receive and send international shipments on a rapid basis, without delay. This means that the U.S. companies, like Emery, which deliver those international shipments must have the ability to provide rapid processing of goods at any hour of the day (or night) and that through-transit and ground delay time must be minimized. Responding to these concerns, Emery introduced its Superhub in Dayton seven years ago and has constantly improved the facility with state-of-the-art technology since then to provide the fastest possible clearance and processing of domestic and international shipments.

The key to Emery's rapid processing system at the Superhub is the "sort", which enables Emery to handle approximately 2½ million pounds of freight at Dayton in a 4-hour time frame on a nightly basis Mondays-Fridays. Between midnight and 4 a.m., approximately 65 aircraft from U.S. points, carrying domestic freight as well as international shipments from U.S. gateways, converge on Dayton and are unloaded within a matter of minutes. The shipments from these flights are then sorted according to destination, along with inbound international shipments which arrive earlier in the day on a flight from Emery's European hub at Maastricht, Netherlands, as well as shipments from the Pacific. The sort is facilitated by a variety of automatic sorters and computers which track each shipment on the sorters. Once the domestic and international freight has been sorted by destination, it is packed into containers and loaded on the 65 waiting planes for flights to various U.S. points (and beyond) or on the east-bound flight to Maastricht which leaves the next morning five days per week, carrying outbound international shipments for Europe. Customs clearance of inbound shipments at Dayton occurs between 4 p.m. and 2 a.m., so that U.S.-bound shipments can enter Emery's sort system quickly and without delay.

By entering international shipments at its Dayton hub in the off peak hours, Emery and its customs brokers avoid the delay faced by other brokers who serve passenger planes arriving at U.S. gateways. Avoidance of such delay is critical to the hub system and at the same time benefits the entire U.S. transportation/customs system by removing new cargo business from these over-burdened gateway hubs so that there are fewer delays for passengers and freight at these entry points.

PRESENT CUSTOMS OPERATIONS AT HUBS

The air express industry not only collects ad valorem user fees like other brokers, but also reimburses Customs directly for both regular and overtime services provided at its hubs. The industry has also shown a strong commitment to the agency's inspection and enforcement efforts by implementing various self policing mechanisms designed to prevent the use of its systems for the movement of contraband.

At present, Customs is able to process international shipments arriving at Emery's Dayton hub almost immediately. Customs is able to provide such expedited clearance of express consignment cargo because Emery provides the agency with advance manifest information and either has an entry ready to file when the shipment arrives or has submitted the data via "ABI", the Automated Broker Interface system used for more than 60% of all entries.

While some critics of the Customs Service have accused the agency of providing favorable treatment to the air express industry, the facts show that the only real difference revolves around hours of operation and the willingness of the air express industry to pay extra for the service which meets its customers' needs. Contrary to charges made at these hearings, Customs figures shows that freight entered at the hubs of Emery and other air express companies is actually subjected to a higher rate of inspection than freight which is entered at other ports. While the national inspection rate average is 18% of all shipments, the rate of inspection for air express shipments arriving at hubs is 25%.

Just as the inspection rate at hubs is higher than the national average, so too is the compliance rate at hub facilities. In a 1988 special enforcement operation targeting textiles and wearing apparel shipments at such facilities, express consignment violations were found at a rate of only 3 per 1,000, which compares favorably to the rate of violations of 8 per 1,000 entries for non-express consignment. These results clearly demonstrate that the air express industry is in full compliance with the agency's enforcement objectives.

ADMINISTRATIVE CHANGE

In recognition of the importance to the U.S. trade industry of rapid clearance of freight by air express service, the Customs Service has proposed a new Part 128 of the Customs Regulations. The pending revisions would implement Congress' view that Customs should provide service when and where it is needed by the shipping public.

The new Part 128 would provide minimal liberalization of entry requirements while imposing strict requirements on the air express industry. Among these requirements are the implementation of a narcotics enforcement agreement, participation in automated processing systems and adherence to detailed manifesting requirements. Any company which meets the regulation's requirements would be entitled to apply for designation as an express consignment facility and receive the benefits of Part 128 procedures. Emery supports implementation of the new Part 128 at the earliest possible date.

Emery also supports two of Customs' additional projects to implement electronic processing of necessary information: the previously described Automated Brokerage Interface and the Automated Commercial Service. Both systems speed the processing and management of information while freeing inspectors to perform other required tasks.

While regulatory changes can improve and streamline processing of air express shipments, those changes will be meaningless unless adequate staff levels are maintained by Customs at hub facilities. Since the cost for such personnel is reimbursed directly by hub operators -- in addition to the _ad valorem_ user fees collected at such facilities -- budgetary constraints should not apply to such resource allocations. Moreover, as Congress recognized two years ago when it enacted the _ad valorem_ merchandise processing fee:

> The importing community has a right to expect the Customs Service to be adequately staffed and to provide its services in an expeditious fashion. It is the intention of the conferees in providing for a customs user fee for cargo shipments, that such a fee will enable the Customs Service to guarantee that staffing and services will be provided at such times and at such levels as are necessary to meet the demand of the shipping public.

132 Cong. Rec. H11426 (daily ed. October 17, 1986).

LEGISLATIVE CHANGE

Emery joins the Air Freight Association and other members of the air express industry in urging favorable congressional consideration of legislation which would facilitate processing of inbound shipments by reducing the time spent on clearance of cargo with lesser value. To this end, the informal entry limit in 19 U.S.C. § 1498 should be raised from its present $1,250 limit to $2,500. Additionally, the statutory definition of a _de minimis_ entry should be raised from $5 to $100. _See_ 19 U.S.C. § 321. These changes would eliminate the need for Customs to devote valuable inspector duty time to review of low-risk shipments.

Finally, Emery supports in principle the concept of reasonable user fees to the extent such fees are necessary to ensure adequate Customs staffing. Any such fees adopted by Congress, however, should be subject to the following conditions: (1) the fees must be reasonably related to cost of actual services provided; (2) express consignment companies like Emery which already pay directly for commercial services provided by Customs (under either the reimbursable or small airport programs) should not be subject to double payment; (3) proceeds from user fees should be deposited directly into a dedicated account to finance commercial services provided by the Customs Service; (4) user fees should be applied and enforced in a nondiscriminatory manner and must apply to the U.S. Postal Service as well as other members of the air express industry; and (5) consolidated entries, both informal and formal, should be subject to a single fee proportionate to the cost of processing the consolidated shipment rather than multiple fees for each individual shipment included in the consolidated entry.

CONCLUSION

The air express industry exists to serve U.S. shippers and consignees. Its phenomenal growth demonstrates both the importance of air express services and the need for continued facilitation by the U.S. Customs Service to maximize the industry's huge potential for increasing the U.S. share of international trade. These conclusions are echoed in the February 1988 study by McKinsey & Company for the Customs Service entitled Developing A Strategic Vision Of U.S. Customs' Commercial Operations.

Massive service improvements, competitive rates and expedited processing of shipments in the domestic U.S. market during the last decade have benefited shippers, consumers, manufacturers and the transportation industry. These same benefits can be brought to international trade only if the growth of the U.S. air express industry is fostered by government policies to assist in the efficient and expeditious clearance of shipments, subject only to appropriate safeguards for protection of duty collection and prevention of unlawful entries.

Delay and expense incurred in Customs and other border processing in foreign countries inhibit development of the air express industry, and the U.S. Customs Service's enlightened effort to facilitate U.S. transportation and trade sets an important, progressive example for customs officials in other countries. Congress should, therefore, support and encourage the agency's efforts to liberalize and streamline its procedures.

BEFORE THE
SUBCOMMITTEE ON OVERSIGHT
COMMITTEE ON WAYS AND MEANS
UNITED STATES HOUSE OF REPRESENTATIVES

HEARINGS ON THE COMMERCIAL OPERATIONS OF THE U.S. CUSTOMS SERVICE

STATEMENT OF FEDERAL EXPRESS CORPORATION
A. DOYLE CLOUD, JR.
VICE PRESIDENT
REGULATORY AND GOVERNMENT AFFAIRS
OCTOBER 28, 1988

Federal Express appreciates this Subcommittee's continuing interest in commercial operations conducted by the Customs Service, and we are pleased to comment on several matters of importance to the international shipping community, the express carrier industry, the Customs Service and Congress.

With revenues nearing four billion dollars for the fiscal year ending May 31, 1988, Federal Express remains the leading company in the express delivery industry. During 1988, our employees around the world handled over 226 million packages and documents -- a nightly average of approximately 900,000 pieces. Our global fleet consists of over 200 aircraft and more than 21,000 vans and trucks, and Federal Express offers direct international service between the United States and over 100 other countries throughout the world.

Federal Express' worldwide integrated air-and-ground distribution network relies upon innovative applications of modern technology to provide delivery services of unprecedented efficiency and reliability. Advanced avionics enable our aircraft to land in weather conditions of extremely limited visibility. Our delivery vehicles are equipped with highly-sophisticated computers which assist our couriers in making an average of 720,000 stops each business day. Further, the progress of each package or document moving through the Federal Express network is electronically monitored by a state-of-the-art automated tracking system, capable of providing virtually instantaneous package-status reports to our customers.

The growth of Federal Express in world markets parallels the emergence of the international express carrier industry to meet the expanding global demand for expeditious transportation over ever-increasing distances. In response to the advent of international express delivery services, the Customs Service has sought new, more effective approaches to its historic enforcement and revenue protection mission.

The ultimate success of the Customs Service's efforts to modernize and improve its cargo clearance and information processing procedures will be of benefit to all parties involved in international commercial transactions. To this end, the Customs Service has been diligent in soliciting the views of U.S. business and industry on the development of new programs and methodologies. Federal Express believes that progressive efforts of this kind by a government agency should be carefully observed and fully encouraged by Congress. Accordingly, we offer the following comments on various matters for this Subcommittee's consideration:

A. Erroneous arguments have been made before this Subcommittee that the Customs Service is not adhering to the law defining those parties to a commercial transaction who are entitled to enter goods into the U.S. Section 484 of the Tariff Act (19 U.S.C. § 1484) has been amended to expressly provide that the consignee of imported merchandise may designate a duly licensed customs broker for entry purposes. Under this statutory authority, Federal Express has designed an airbill pursuant to which every shipper lawfully designates Federal Express as the consignee and importer of record for customs clearance purposes.

This designation allows Federal Express, in turn, to arrange for customs clearance through duly-licensed customs brokers with whom we maintain contractual relationships. Although in certain cases we might agree to use a broker specified by a shipper, the overwhelming majority of Federal Express shippers demand only that their goods move on a door-to-door, customs cleared, express basis -- they are not generally concerned with choosing a particular customs broker. Amendments to the statute cited above allow Federal Express to satisfy the commercial demands of our customers while remaining fully in compliance with all customs clearance legalities.

B. In order to satisfy our customers' demands for consistently expeditious service, Federal Express must constantly ensure its compliance with all required entry, inspection, examination and clearance procedures established by the Customs Service. To accomplish this, Federal Express must (i) provide customs with electronically conveyed advance manifest and entry information, (ii) have entry documents properly prepared and ready to file upon the arrival of shipments, (iii) deliver all cargo into the Customs Service's custody for inspection and examination, and (iv) reimburse the Customs Service for work performed by its personnel at times outside of normal hours of operation.

It is the increased automation of the Customs Service, coupled with Federal Express' expertise in the development and deployment of high technology information processing systems, that has allowed the acceleration of the customs clearance process without compromising the Customs Service's ability to protect the interests of the U.S. Federal Express' operations are frequently subjected to intensive, comprehensive reviews by the Customs Service, and we appreciate that this degree of scrutiny is the best means of making certain that the needs of our customers are harmonized, to the fullest extent possible, with the requirements of the Customs Service.

C. There is no unlawful or unjust discrimination favoring international express carriers over other entities with respect to the availability of efficient customs clearance services. Expedited processing and inspection services are available to all qualified handlers of express traffic who satisfy the Customs Service's exacting standards. However, there is significant, unwarranted discrimination between the complex of customs clearance procedures to which all private industry is subjected and the summary customs clearance procedures enjoyed by the U.S. Postal Service.

The Postal Service annually imports almost three times the volume of merchandise that is brought into the U.S. by private express carriers. Although the Postal Service and private express carriers compete in the open marketplace for all of this traffic, the Postal Service is not hampered by detailed customs clearance requirements upon arrival in the U.S. Private carriers must provide extensive information in the form of a shipment manifest for intangible shipments presented to the Customs Service; the Postal Service is not required to present this information on a properly completed shipment manifest. Every document brought in by the private express industry is accompanied by a signed international airbill reflecting information about the shipper, consignee, commodity, value, etc. A document handled by the Postal Service is not required to be accompanied by such information and may not even list a return address.

Federal Express submits that U.S. law and Customs Service practices should be competitively neutral. The traffic handled by the Postal Service (in conjunction with many foreign "privatized" postal monopolies), should not be entitled to special privileges. Private express carriers should not be required to present a manifest reflecting extensive information on either (i) intangible shipments (Tariff Schedules of the U.S. Annotated, Gen. Headnote 5(e)), or (ii) articles which are specifically exempted from formal entry requirements (19 U.S.C. § 1321). If there is no need for the Postal Service's intangible and entry-exempt shipments to be accompanied by a detailed manifest, then there is no legitimate need for such information when the same traffic is handled by a private express carrier.

D. Federal Express believes that customs formalities should be suspended when the administrative costs incurred by the Customs Service exceed the amount of revenue collected. Pursuant to 19 U.S.C. §§ 1321 and 1498(1), the Customs Service is authorized to waive the collection of duties and taxes on certain low-value entries and relax declaration and entry requirements for imports valued up to $1,250.00. Federal Express understands that the average rate of duty for these informally entered items is less than 5%, and we suggest that the Customs Service should, as a general rule, be permitted to exempt from declaration and entry requirements any express consignment that would not "pay for itself." Whatever amount the U.S. Government might lose in revenue will be more than offset by the resulting reduction in significant administrative costs. This cost-effective approach should be embodied in customs law and regulations, and Federal Express urges Congress and the Customs Service to carefully consider appropriate legislation on this subject.

E. Pursuant to existing user fee legislation (19 U.S.C. § 58c(a)(10)), the Customs Service collects merchandise processing fees calculated at Congressionally determined rates applied against the value of all formal import entries. In addition to remitting these user fees, private express carriers reimburse the Customs Service for the cost of dedicated, overtime processing and inspection services provided at centralized sorting facilities (31 U.S.C. § 9701).

If the user fees paid to the Customs Service represent basic compensation for the costs of providing cargo inspection and information processing services, there should be no reimbursement by private express carriers in any fiscal year where user fees collected from that carrier's traffic exceed the amount of reimbursable expenses incurred by the Customs Service on behalf of that carrier. Also, it is more appropriate to assess a uniform, flat-rated user fee reflecting the actual operational and administrative costs incurred by the Customs Service on a per-transaction basis, without regard to the value of entered commodities. Federal Express urges Congress and the Customs Service to consider remedial legislation addressed to these issues.

Federal Express welcomes this opportunity to comment on current customs' issues and the future direction of Customs Service programs, including those that involve coordination with other federal agencies empowered to perform limited cargo inspection duties. Congress should carefully monitor and work to facilitate the increasing automation of the Customs Service and the modernization of all facets of its operations, to the ultimate benefit of U.S. international trading interests.

Because there is no inherent conflict between the requirements of international commerce and the vital national interests protected by the Customs Service, Federal Express believes that the Customs Service should continue to consult with private sector concerns on all matters where coordinated planning and implementation will be of benefit to U.S. international commerce.

Respectfully submitted,

FEDERAL EXPRESS CORPORATION

A. DOYLE CLOUD, JR.
Vice President
Regulatory & Government Affairs

2255B

STATEMENT OF THE LAREDO CHAMBER OF COMMERCE
DIANNE MENDOZA FREEMAN, EXECUTIVE VICE PRESIDENT
DENNIS E. NIXON, CHAIRMAN, BRIDGE COMMITTEE &
PRESIDENT, INTERNATIONAL BANK OF COMMERCE

The Laredo Chamber of Commerce is dedicated to representing the business community of Laredo by preserving and protecting the free enterprise system, improving the economic well-being of all citizens and enhancing the quality of life for the entire community.

In response to this mission, one of the top ten priorities cited in the Chamber's 1987-1988 Action Plan calls for working to promote and strengthen Laredo's distinction as the major port of entry and distribution center and to intensify twin-plant or "maquiladora" facilities in the area.

Therefore, the purpose of this briefing paper is to present summaries of the Laredo Chamber of Commerce's Bridge Committee position regarding U.S. Customs and Immigration and Naturalization Service issues that are impacting international commerce and tourism which are vital components of Laredo's potential for economic diversification and survival. *More pointedly, we are interested in accomplishing a basic task--moving a person, vehicle or import activity from point A to point B across our bridges as easily as possible.*

The Laredo Chamber of Commerce wishes to acknowledge the contribution of the members of the Bridge Committee in the preparation of these materials and the cooperation we have had from local representatives of the U.S. Customs and Immigration and Naturalization Service.

PORT MANAGEMENT ISSUES

1. *The Laredo Chamber of Commerce maintains that there is a need to develop U.S. Customs and INS joint operating procedures/policy for the Laredo area.*

PRESENT SITUATION: At the present time, there is no written policy that specifies how the Laredo bridges are to be staffed on a daily basis. Even though there is a local cooperative attitude between both U.S. Customs and INS and verbal agreements do exist between both agencies that they will share the manning of the ports of entry on a 50-50 basis, no formal policy is specified. For example, a verbal agreement between U.S. Customs and INS was formulated during the early part of 1987 indicating that both agencies would cooperate in manning the primary lanes on Bridge I and Bridge II. The U.S. Customs District Director and the INS District Port Director agreed to man the lanes on a "50-50" basis, keeping six lanes open on Bridge II and at least four lanes open at all times on Bridge I, Monday through Saturday, during the hours of 12:00 noon to 8:00 p.m. Even though many assurances were given to the Chamber that the "50-50" agreement was being implemented, the lanes were not generally manned on Bridge I as per the agreement and it was noted recently that Bridge II was only manned with four stations which resulted in a heavy traffic "backlog," while Bridge I was practically empty. The condition continues to demonstrate what occurs when a definite policy and/or action plan is not in use. The fault for these problems may not lie with the District level personnel but rather with the line supervisors and line personnel who may have chosen to disregard the mandate or because the level of turnover is so great the lack of a written policy makes dependence on verbal communication inappropriate or unreliable. Therefore, it is sometimes difficult to know who is in charge and who to hold accountable during a crisis situation. In this case, it was reported that U.S. Customs was not fulfilling their commitment on Bridge I. The Bridge II problem was not discernable.

Inspection procedures are also varied. We know that primary inspections should follow specified procedures. However, we also know that individual inspectors have different modes of questionning or inspecting vehicles. For example, one inspector may be approving entry at a much faster rate than another, because if he questions a vehicle, it is sent on to secondary inspection for a more thorough review. Another inspector may choose to take on the more thorough review in the primary lane, i.e., trunk opening, which then leads to traffic congestion in that particular lane.

Management of the external points, i.e., IH 35, etc., needs to be carefully monitored because "bottlenecks" do occur during heavy traffic periods.

RECOMMENDED SOLUTION (S):

A. A written policy which responds to local needs should be developed between U.S. Customs and INS. This policy should set out the basic daily operating procedures and manning requirements to include an action plan to deal with rapidly changing traffic/congestion patterns. This policy should be in sufficient detail as to establish accountability, and to act as an operating tool for line inspectors.

B. A division of responsibility should be determined for each bridge. That is, INS could be responsible for one bridge and Customs for the second bridge. Over the years, it has been difficult to establish accountability for each agency because of not being able to adequately determine responsibility. Whatever method is used, accountability should be the principal objective of the program.

C. External points should be managed in order to properly staff these checkpoints during heavy traffic periods.

D. A thorough review process should be implemented on an ongoing basis to determine the effectiveness of all policies and procedures. Meetings and input should be received from the private sector. It is recommended that a joint INS/Customs meeting be scheduled quarterly and be coordinated by the Chamber of Commerce in order to evaluate the actions and problems encountered during the previous quarter. A record or minutes of these meetings should be maintained in order to establish good follow through and accountability.

E. To modernize inspection procedures, the committee recommends that an "express lane" be implemented where U.S. citizens who have nothing to declare can be processed more quickly and efficiently.

F. Another modernization tool might be the implementation of a "frequent user permit." This permit could be given to individuals who would apply for the permit and receive it only after a thorough personal background examination. It might be a renewable permit which could be applied for every 3-6 months. The permit might also be bonded with a specific dollar amount charged for this special privilege.

G. The committee recommends that appropriate signage in English and Spanish be placed at both bridges indicating that individuals should ready their documentation as they approach the checkpoint at the port of entry.

2. *The Laredo Chamber of Commerce maintains that the staffing of the Laredo ports of entry is in need of a management review.*

PRESENT SITUATION: The allocation of staff resources should be placed under the control of a single authority rather than the current "sharing" of responsibility for staffing bridges and ports of entry between U.S. Customs and INS. It appears that although many inspectors are brought into the area, many of these inspectors have limited types of port experience. Many bring to the position only law enforcement background and, therefore, focus on primary and secondary inspections targeted at drug intradiction efforts. Inspectors that have experience in international trade are limited and these are sorely needed to enhance our commercial efforts. The numbers of inspectors having varied port experience need to be better balanced.

RECOMMENDED SOLUTION (S):

A. The committee recommends that 60% of port personnel should be required to have experience dealing with international trade or commercial cargo, while 40% of the personnel should have only law enforcement experience.

B. The committee recommends that we begin efforts at lobbying for adequate appropriations, both from a monetary and personnel perspective, that take into account the volume and monies generated by the Laredo port of entry as opposed to other locales that should not have as high a priority for funding or staff allocations because they do not generate the heavy international trade activity associated with Laredo.

C. It is also our understanding that inspectors (both Customs and INS) have the ability to easily relocate when an opening arises at another port more esthetically appealing or without the pressure associated with U.S./Mexico border duty. We recommend that in hiring new inspectors in this region, that as a condition of employment, they not be allowed a new assignment within the first four (4) years, unless specifically granted by local chiefs. We would also recommend consideration for differential pay scales for severe duty stations. Those to be designated by the respective commissioner based on recruiting problems and retention. A turnover point could be used to trigger the designation.

D. To further enhance the skill level of inspectors, we would recommend specialization, i.e., cargo inspectors that would be trained to handle cargo and be assigned that function continuously, instead of regularly being rotated. This continuity would enhance efficiency and production, plus provide better interdiction because of increased skill levels achieved because of specialization.

3. *The Laredo Chamber of Commerce maintains that there is a need for the modernization of procedures and policies in both the U.S. Customs and Immigration and Naturalization Service for the Laredo service area.*

PRESENT SITUATION: There is no consistency in procedures utilized by either the U.S. Customs or INS. Peak periods such as holidays or special events are not being appropriately staffed by either agency. The inability to provide for additional management controls or staffing during these peak periods continues to create traffic congestion which hampers tourism and international commerce. It is also clear that there is no training program in place that deals with the subject of courtesy and/or cultural aspects that are relevant to the port of entry in Laredo as it relates to the U.S.-Mexican culture. The bridge committee recognizes the increased efforts in the U.S. Customs and INS Drug Enforcement programs. However, the committee is also aware of the increase in the number of complaints from bridge users about the rude, inhospitable and surly behavior shown by some U.S. Customs and INS inspectors at primary and secondary inspection lanes. It is also evident that many inspectors are technically operating within the guidelines provided, but are leaving an indifferent or sarcastic impression on people entering the U.S.

Hours of operation are also not meeting local needs for international trade, tourism, or pedestrian traffic. The issue of overtime work costs continues to be cited as a major obstacle to meeting local requests for service and must be addressed. Rosters developed by the U.S. Customs and INS in advertisement and recruitment efforts should take on a local or, at the very least, a regional aspect.

RECOMMENDED SOLUTION (S):

A. The committee recommends the implementation of some work rule changes which might result in a "management alert system." This system might be as simple as indicating by colored lights--green, traffic flow is controlled remain at station; yellow, traffic flow becoming congested secondary inspectors not needed move to open additional inspection lanes; red, traffic flow congested, condition critical, all personnel (supervisory included) move to open additonal inspection lanes. The primary purpose of such a system is to key up the staff. It is our belief that inspectors tend to work at the same pace during congested periods as noncongested periods. Supervisors should be required to take action in a critical traffic period when an individual inspector seems to impede traffic by unreasonably long questioning or additional inspection procedures in primary such as opening car trunks. A system such as this should also define the operating guidelines to be followed creating accountability, i.e., when red condition exists, the Bridge must be manned with six primary lanes, etc.

B. An enhancement in the local training program for courtesy/cultural relevance should be implemented for inspectors working in the Laredo port of entry. It is recommended that Laredo State University/Laredo Junior College be involved in this process to give the program local flavor and draw on the resources available saving man hours and money.

C. The hours of operation should be enhanced for Bridge II to alleviate traffic congestion during weekend late night excursions, special events, holidays, etc. The committee recommends better manning of Bridge I when Bridge II is closed. Also, the agencies should keep Bridge II open until 1:00 a.m. on Fridays, Saturdays and holidays.

D. Good records should be maintained on how the Bridges are being manned, i.e., how many primary lanes are being manned and the hours. These records should be audited or monitored because past experience has shown significant variance between actual manning and reported manning. There seems to be a tendency to play "cat and mouse" with this issue. The people may be in place, but they are not manning the inspection station.

E. We recommend that courtesy be emphasized at all times when inspectors are on duty, and the inspector be easily identified for the purpose of making a complaint.

COMMUNITY INTERACTION/COMMUNICATION ISSUES

1. *The Laredo Chamber of Commerce believes that there needs to be a much better transfer of information between U.S. and Mexican agencies involved in enforcement of U.S. Customs and INS laws, relating to International Trade.*

PRESENT SITUATION: When Mexican Customs did not allow for clearance of exported goods from its interior ports, the goods and documents arrived at the Port of Nuevo Laredo for final clearance by the Mexican export broker delineating the necessary documents for U.S. Customs and the U.S. Customsbroker who was preparing the appropriate entry documents. Subsequent to the Mexican government's decision to allow release of exported goods from interior ports, traffic congestion has been created at the Laredo port of entry because the agencies needed to "clear" the traffic are closed. Also, documents are being carried by truck drivers who lose the documents or who do not know who the documents should be given to.

Therefore, this new Mexican "interior port release" program is placing demands on the international trade community. It appears that the trade community has not been able to respond appropriately to the need for twenty-four hour port activity. U. S. Customs has extended their full staff hours until 7:00 p.m. but not all other agencies have followed this trend. This two hour extension in hours may help clear the import lot traffic in a more efficient manner and at no additional cost to the Importer, but not everyone is taking advantage of this new service. In esssence, the trade community must be "visionary" and respond to international trade volumes with existing facilities and personnel, noting that the future of the Laredo port of entry lies in the creation of twenty-four hour services.

In conclusion, the congestion problems appear to have a set of common denominators, i.e., lack of cooperation, communication, limited facilities, new procedures and increased trade volume.

There exists a need for additional bridge space and in two or three years the need will be critical due to the expected large increase in import and the potential increase in U.S. exports as Mexico relaxes its import restrictions because of GATT. The existing problems reflect the need to plan ahead for the Laredo area.

RECOMMENDED SOLUTION (S):

A. A "select" committee with governmental and trade representatives of both countries meeting, perhaps quarterly, to discuss mutual problems and possible solutions. These meetings should be on a "port by port" basis along the border with a general meeting once or twice a year to cover the entire border since many of the problems are generic.

B. Seminars between U.S. and Mexican Brokers with U.S. Customs and INS and Mexican Customs and INS to discuss the logistics and specific problems of trade. These meetings should be on a "port by port" basis as situations differ from port to port, with representatives of interior ports participating. A meeting, semiannually or annually, should be held to sensitize or assimilate the information.

C. INS and Customs should meet at least quarterly with members of the local community to air problems and discuss future events. This process is now in place with U.S. Customs, but needs to be implemented with both agencies. It is our belief that these meetings should be joint. Many issues cannot be resolved quickly without both agencies making a commitment. We spend too much time playing "cat and mouse."

D. The need for a dedicated "Commercial Cargo Bridge"-- a third bridge in the Laredo-Nuevo Laredo area. This requires that the City of Laredo pursue a Presidential Permit for such a facility, and U.S. Customs and INS be ready to provide the staffing and services required by such a facility. However, it should be noted that a highly efficent facility would eliminate or delay the need for a third bridge.

E. The committee recommends that the agencies provide a method to sanction brokers who do not operate sufficient hours to handle their traffic. This would help to prevent long traffic jams.

F. All agencies such as agriculture, etc., should be responsive and required to operate to meet the needs of the port.

G. A survey "Speak Out! Laredo Cares" has been initiated by the Bridge Committee of the Laredo Chamber of Commerce. The Chamber wants to provide accurate information to both INS and Customs about problems. This questionnaire is being used to provide feedback on actual problem situations.

H. A method must be devised to get documents to the U.S. Broker before the Mexican driver goes back to Mexico for the night. The documents should be secured upon arrival at the "Satellite/Temporary Import Lot."

I. The Laredo ports of entry must be operated as twenty-four hour facilitites.

J. A method must be devised to separate commercial cargo from tourist vehicular traffic.

K. A third bridge must be a high priority for Laredo.

L. The U.S. Customs and INS should allow local input when they are called upon to provide for short term and long term facility planning for the Laredo port of entry.

L. The U.S. Customs and INS chould place an electronic visual monitoring system at Bridge I and II. The TV monitors should be installed in the offices of the Port Director and District Director of Customs, respectively, to allow visual monitoring of all bridge situations. This equipment would allow the directors to respond more efficiently to all bridge situations that might arise, i.e., traffic congestion or visitor concerns.

LAREDO CHAMBER OF COMMERCE
BRIDGE COMMITTEE
DENNIS E. NIXON, CHAIRMAN

MEMBER NAME	*COMPANY/BUSINESS AFFILIATION*
FERNANDO A. ZUNIGA	FF ZUNIGA LICENSED U.S. CUSTOMS BROKER
JOHN MCKEOWN	MCKEOWN CUSTOMHOUSE BROKERS PRESIDENT, U.S. CUSTOMHOUSE BROKERS ASSOCIATION, LAREDO
PANCHO AVERILL	CORRIGAN DISPATCH COMPANY
JERRY BROCHIN	SONY MAGNETIC PRODUCTS INC. OF AMERICA GENERAL MANAGER
MARVIN TOWNSEND	CITY OF LAREDO, CITY MANAGER
HECTOR GARCIA	INSCORP, CO-OWNER
ANDRES RAMOS	TEXAS MEXICAN RAILWAY COMPANY, PRESIDENT
EMILIO SADA PAZ	NUEVO LAREDO CUSTOM HOUSE BROKERS ASSN. PRESIDENT
JOE CRUZ	JAC BRICK SUPREME, OWNER ARTURO G. VELA U.S. LICENSED CUSTOMS HOUSE BROKER, GENERAL MANAGER (RET.) U.S. CUSTOMS PORT DIRECTOR, EAGLE PASS, TEXAS [16 YEARS]
DAN HASTINGS	DANIEL B. HASTINGS INC. CUSTOM HOUSE BROKERS
RAUL PERALES	LAREDO NATIONAL BANK
JIM COLEMAN	LAREDO DEVELOPMENT FOUNDATION
LUIS G. GUERRA, JR.	INTERNATIONAL BANK OF COMMERCE
FRANK LEACH	LAREDO DEVELOPMENT FOUNDATION, DIRECTOR
JACINTO JUAREZ, PH.D.	LAREDO JUNIOR COLLEGE CITY OF LAREDO, COUNCILMAN DIST. II
ARNULFO SANTOS	ALFREDO SANTOS GROCERY STORE, OWNER COUNTY OF WEBB, COMMISSIONER PCT. IV
JAVIER ELIZONDO	JAVIER ELIZONDO, C.P.A.
LEO SAYAVEDRA, PH.D	LAREDO STATE UNIVERSITY, PRESIDENT
PHIL LANE	LAREDO STATE UNIVERSITY
ELMO LOPEZ, JR.	INTERNATIONAL BANK OF COMMERCE
RAMIRO RAMIREZ	EL CENTRO MOTEL, GENERAL MANAGER PRESIDENT, LAREDO HOTEL/MOTEL ASSN.
BILL GREEN	LAREDO MORNING TIMES, PUBLISHER
DENNIS LONGORIA	CENTRAL POWER & LIGHT COMPANY
RICHARD DIEBEL	UNION NATIONAL BANK
PAUL GARZA	PAUL GARZA & ASSOCIATES
FLORENCIO PENA	ASSISTANT CITY MANAGER, CITY OF LAREDO
CARLOS R. VILLARREAL	DIRECTOR, COMMUNITY DEVELOPMENT DEPT. CITY OF LAREDO

J.B. CASTELLANO	REGIONAL DIRECTOR, U.S. CUSTOMS SERVICE
AUDREY A. PLOTKIN	ASST. DIRECTOR, U.S. CUSTOMS SERVICE
PORT DIRECTOR	IMMIGRATION & NATURALIZATION SERVICE
HECTOR BOLANOS	PRESIDENT, COMMITTEE FOR INDUSTRIAL DEVELOPMENT, NUEVO LAREDO, TAMAULIPAS, MEXICO
J. JORGE VERDUZCO	INTERNATIONAL BANK OF COMMERCE

EXHIBIT I

BRIDGE QUESTIONNAIRE (Por favor califique el trato recivido al cruzar la frontera)

Sample #1

1. Date/Time you crossed the bridge: 15/III/87
(Hora y fecha en que cruzo el puente) 1238 AM [✓ PM]
2. Which bridge did you cross? (Circle one)
(Cual puente utilizo al pasar a los EE.UU.?) Marque el apropiado
[✓ a. Bridge 1 (Old Bridge)]
Puente No. 1 (Puente antiguo, cruce con Ave. Guerrero)
b. Bridge 2 (New Bridge, IH 35 South)
Puente No. 2 (Puente Nuevo Juarez/Lincoln, cruce a carretera a San Antonio)
3. Which agency inspected your vehicle? (Circle one) walked
(Que agencia del gobierno de EE.UU. inspecciono su vehiculo?)
a. U. S. Customs Aduana b. Immigration and Naturalization Service Inmigracion
4. What was the inspector's name:
(Anoto el nombre del inspector?)
Badge No.: (. . . el numero de la placa?)

NAME, ADDRESS & PHONE (Nombre y Domicilio)
Louis Goodman
AUSTIN TX
78701
512 472 6704

5. How long did you have to wait in line at the bridge? 0
(Aproximadamente, cuanta fue su demora al cruzar?)

PERFORMANCE RATING SCALE
(CALIFICACIONES)
1 = Excellent (Excelente) 3 = Average (Promedio) 5 = Poor (Mal)

6. Overall, how would you rate the friendliness and courtesy of Customs/INS inspector? (Circle one)
(En general, como calificaria la amabilidad y cortesia mostrada por el inspector?) Escoja el mas apropiado y marque
1 2 [✓ 3] 4 5
7. How would you rate Laredo's bridge condition?
(Como calificaria la condicion fisica del puente?)
1 [✓ 2] 3 4 5
8. Would you visit Laredo again? [✓ Yes Si] No No
(Volveria usted a Laredo?)

COMMENTS (Comentarios): It is important that US customs inspectors treat US citizens with courtesy and respect.

BRIDGE QUESTIONNAIRE (Por favor califique el trato recivido al cruzar la frontera)

Sample #2

1. Date/Time you crossed the bridge: 1-6-88
(Hora y fecha en que cruzo el puente) 7:00 AM [✓ PM]
2. Which bridge did you cross? (Circle one)
(Cual puente utilizo al pasar a los EE.UU.?) Marque el apropiado
[✓ a. Bridge 1 (Old Bridge)]
Puente No. 1 (Puente antiguo, cruce con Ave. Guerrero)
b. Bridge 2 (New Bridge, IH 35 South)
Puente No. 2 (Puente Nuevo Juarez/Lincoln, cruce a carretera a San Antonio)
3. Which agency inspected your vehicle? (Circle one)
(Que agencia del gobierno de EE.UU. inspecciono su vehiculo?)
[✓ a. U. S. Customs Aduana] b. Immigration and Naturalization Service Inmigracion
4. What was the inspector's name:
(Anoto el nombre del inspector?)
Badge No.: (. . . el numero de la placa?)

NAME, ADDRESS & PHONE (Nombre y Domicilio)
Tom Torres
4400 Blvd Suite 7
San Antonio Texas 78240

5. How long did you have to wait in line at the bridge?
(Aproximadamente, cuanta fue su demora al cruzar?)

PERFORMANCE RATING SCALE
(CALIFICACIONES)
1 = Excellent (Excelente) 3 = Average (Promedio) [✓ 5 = Poor (Mal)]

6. Overall, how would you rate the friendliness and courtesy of Customs/INS inspector? (Circle one)
(En general, como calificaria la amabilidad y cortesia mostrada por el inspector?) Escoja el mas apropiado y marque
1 2 3 4 [✓ 5]
7. How would you rate Laredo's bridge condition?
(Como calificaria la condicion fisica del puente?)
1 2 3 4 [✓ 5]
8. Would you visit Laredo again? Yes Si [✓ No No]
(Volveria usted a Laredo?)

COMMENTS (Comentarios): I Think Bridge Traffic Needs Improvement I.E. Security Officers

---

Since I brought a group of 80 people. We will never return.

BRIDGE QUESTIONNAIRE (Por favor califique el trato recivido al cruzar la frontera)

Sample #3

1. Date/Time you crossed the bridge: 1/16/87 4:30p.m.
(Hora y fecha en que cruzo el puente)
We will tell others of our AM/PM negative experience
2. Which bridge did you cross? (Circle one)
(Cual puente utilizo al pasar a los EE.UU.?) Marque el apropiado
[✓ a. Bridge 1 (Old Bridge)]
Puente No. 1 (Puente antiguo, cruce con Ave. Guerrero)
b. Bridge 2 (New Bridge, IH 35 South)
Puente No. 2 (Puente Nuevo Juarez/Lincoln, cruce a carretera a San Antonio)
3. Which agency inspected your vehicle? (Circle one)
(Que agencia del gobierno de EE.UU. inspecciono su vehiculo?)
[✓ a. U. S. Customs Aduana] b. Immigration and Naturalization Service Inmigracion
4. What was the inspector's name: ? White Male
(Anoto el nombre del inspector?) Later, white female
Badge No.: (. . . el numero de la placa?)
504-276-8444 504-525-3013

NAME, ADDRESS & PHONE (Nombre y Domicilio)
Patricia B. Tombar
1553 BRIARHGATH
N O, LA 70128

5. How long did you have to wait in line at the bridge? 30 mins
(Aproximadamente, cuanta fue su demora al cruzar?)

PERFORMANCE RATING SCALE
(CALIFICACIONES)
1 = Excellent (Excelente) 3 = Average (Promedio) [✓ 5 = Poor (Mal)] EXTREMELY

6. Overall, how would you rate the friendliness and courtesy of Customs/INS inspector? (Circle one)
(En general, como calificaria la amabilidad y cortesia mostrada por el inspector?) Escoja el mas apropiado y marque EXTREMELY POOR
1 2 3 4 [✓ 5]
7. How would you rate Laredo's bridge condition?
(Como calificaria la condicion fisica del puente?)
1 2 3 4 5
8. Would you visit Laredo again? Yes Si [✓ No No] NEVER
(Volveria usted a Laredo?)

COMMENTS (Comentarios): WE WERE PERSONALLY harassed, searched, padded down and treated like criminals for no apparent reason

I personally resent this inhumane treatment.

BRIDGE QUESTIONNAIRE (Por favor califique el trato recibido al cruzar la frontera)

Sample #4

1. Date/Time you crossed the bridge: 9/24/88, 11:00 AM.
(Hora y fecha en que cruzo el puente) [✓ AM] PM
2. Which bridge did you cross? (Circle one)
(Cual puente utilizo al pasar a los EE.UU.?) Marque el apropiado
[✓ a.] Bridge 1 (Old Bridge)
Puente No. 1 (Puente antiguo, cruce con Ave. Guerrero)
b. Bridge 2 (New Bridge, IH 35 South)
Puente No. 2 (Puente Nuevo Juarez/Lincoln, cruce a carretera a San Antonio)
3. Which agency inspected your vehicle? (Circle one)
(Que agencia del gobierno de EE.UU. inspecciono su vehiculo?)
[✓ a.] U. S. Customs Aduana b. Immigration and Naturalization Service Inmigracion
4. What was the inspector's name: DID NOT SEE
(Anoto el nombre del inspector?)
Badge No.: (. . . el numero de la placa?)

NAME, ADDRESS & PHONE (Nombre y Domicilio)
THOMAS W TULLO
8212 CLAMP AVE
SAN ANTONIO, TX 78221

5. How long did you have to wait in line at the bridge? 1½ HRS
(Aproximadamente, cuanta fue su demora al cruzar?)

PERFORMANCE RATING SCALE
(CALIFICACIONES)
1 = Excellent (Excelente) 3 = Average (Promedio) [✓ 5 = Poor (Mal)]

6. Overall, how would you rate the friendliness and courtesy of Customs/INS inspector? (Circle one)
(En general, como calificaria la amabilidad y cortesia mostrada por el inspector?) Escoja el mas apropiado y marque
1 2 3 4 [✓ 5]
7. How would you rate Laredo's traffic condition?
(Como calificaria el trafico en el puente?)
1 2 3 [✓ 4] 5
8. Would you visit Laredo again? [✓ Yes Si] No No
(Volveria usted a Laredo?)

COMMENTS (Comentarios): WE HAD TO WAIT "TOO" LONG TO GET BACK TO TEXAS. WHY? ALSO WHY CAN'T BOTH BRIDGES BE OPEN. I'LL NEVER GO AGAIN AT THIS TIME.

BEST AVAILABLE COPY

SPEAK OUT!
LAREDO CARES

NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES

Business Reply Mail
FIRST CLASS PERMIT NO. 198 LAREDO, TEXAS

POSTAGE WILL BE PAID BY ADDRESSEE

LAREDO CHAMBER OF COMMERCE
P. O. Box 790
Laredo, Texas 78042-9983

BRIDGE QUESTIONNAIRE (Por favor califique el trato recivido al cruzar la frontera)

1. Date/Time you crossed the bridge: ____________________
(Hora y fecha en que cruzo el puente)
____________ AM / PM

2. Which bridge did you cross? (Circle one)
(Cual puente utilizo al pasar a los EE.UU.?) Marque el apropiado
- **a. Bridge 1 (Old Bridge)**
  Puente No. 1 (Puente antiguo, cruce con Ave. Guerrero)
- **b. Bridge 2 (New Bridge, IH 35 South)**
  Puente No. 2 (Puente Nuevo Juarez/Lincoln, cruce a carretera a San Antonio)

3. Which agency inspected your vehicle? (Circle one)
(Que agencia del gobierno de EE.UU. inspecciono su vehiculo?)
- **a. U. S. Customs**
  Aduana
- **b. Immigration and Naturalization Service**
  Inmigracion

4. What was the inspector's name: ____________________
(Anoto el nombre del inspector?)
Badge No.: (. . . el numero de la placa?) ____________

NAME, ADDRESS & PHONE (Nombre y Domicilio) ____________
____
____
____

5 How long did you here to wait in line at the bridge? ____________
(Aproximadamente, cuanta fue su demora al cruzar?)

PERFORMANCE RATING SCALE
(CALIFICACIONES)

1 = Excellent (Excelente)	**3 = Average** (Promedio)	**5 = Poor** (Mal)

6. Overall, how would you rate the friendliness and courtesy of Customs/INS inspector? (Circle one)
(En general, como calificaria la amabilidad y cortesia mostrada por el inspector?) Escoja el mas apropiado y marque
1 2 3 4 5

7. How would you rate Laredo's bridge conditon?
(Como calificaria la condicion fisica del puente?)
1 2 3 4 5

8. Would you visit Laredo again? Yes No
(Volveria usted a Laredo?) Si No

COMMENTS (Comentarios): ____________________
____
____
____

EXHIBIT II

Manchester Trade
International Business Advisors
1155 FIFTEENTH ST., N.W.
SUITE 314
WASHINGTON, D.C. 20005

STEPHEN LANDE, President
WILLIAM D. EBERLE, Advisor

Telephone: 202-331-9464
Facsimile 202-785-0376

October 19, 1988

The Honorable J.J. Pickle
Chairman, Subcommittee on Oversight
Committee on Ways and Means
1105 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Pickle,

We want to thank the Subcommittee and its Chairman for providing opportunities for comments from the public on U.S. Customs entry and enforcement procedures for inclusion in the official record of the first phase of your oversight hearings on the Customs Service.

Manchester Trade, Ltd., an international trade consulting firm, has been requested to submit these comments on behalf of certain importers in the greater metropolitan area of Los Angeles.

These importers are concerned about certain Customs procedures which prevent them from accomplishing timely deliveries to their customers, and add to their costs. They understand that Customs has responsibility for protecting the United States from unlawfully entered merchandise.

This task has become particularly pressing in light of the necessity to take strong actions to prevent the entry of illegal drugs. However, they believe that sometimes this protective responsibility has gone overboard, and results in a needless disruption of trade. Alternative procedures could be developed which would allow Customs to carry out its responsibilities just as effectively but in ways that minimize the burden on the private sector.

Some of the practices which have disturbed the importers with whom we are in contact include:

-- "ISET TEAM EXAMINATION" in which merchandise of a particular sector (e.g. hand tools) becomes the focus of lengthy and complicated Customs scrutiny by a team of Customs' specialists. Customs undertakes the "team" examination in painfully slow fashion rather than establishing a streamlined, time-sensitive schedule for the examinations. Not only does this needlessly delay commerce but, it adds to the importer's costs since he is responsible for warehousing and other charges.

-- The "devanning" of merchandise without predictability as to the completion date of the examination by Customs. Customs examines as manpower permits but will not agree to a scheduled appointment. This "as we get to it" approach is costing the importer and ultimately, the public, millions of dollars. The importer is responsible under the law for the compensation and expenses of Customs officers engaged in the "devanning" of merchandise and for the storage charges, even if there is no Customs law infraction. Such examinations usually cost the importer $1,000 or more. Particular time constraints relating to examination completion and cost limitation must be imposed.

-- Detained merchandise can wreck havoc with delivery schedules. The Customs information blackout, combined with an absence of a fixed date for terminating detention procedures creates a situation where the importer has his merchandise virtually seized without recourse.

-- As with detention, holding of shipments for tailgate inspections with no date for the inspection leads invariably to cancelled orders. Reasonable termination deadlines are necessary to protect the importing public.

-- An excessive number of tailgate and mobile team examinations destroys the credibility of an importer. We believe that often Customs may not realize that it is engaging in excessive inspection against a single innocent importer. A formal mechanism should exist to diffuse such Customs harassment and trade disruption.

-- Inconsistent and unpredictable interpretations of Customs' regulations exist on such issues as country-of-origin marking. In the few instances when examination has resulted in a claimed violation of Custom's entry requirements, the offense has been in an area of law or regulation which is neither transparent, nor consistently interpreted by Customs officers. More predictability and consistency is necessary to minimize disruption to the trade and the flow of goods to the public.

-- Merchandise is very often seized by local U.S. Customs officers based on unsubstantiated claims that the subject merchandise is infringing valid trademarks or patents. The Customs' officers do not consult in advance with experts in these areas of intellectual property law, such as reside at the International Trade Commission. The officers are basing their judgments and actions on the claims of domestic firms with a selfish interest in seeing that the merchandise never reaches the consuming public. Errors of interpretation by Customs officers are too high in this area for present practice to be continued.

-- Repeated "spot checks" by Customs on shipments consigned to particular importers. We have been told that Customs has been scrutinizing the shipments of certain importers with alarming frequency. The importers in these cases have not necessarily been repeat offenders of the Customs' laws. Importers should not be singled out without cause. When they are singled out, they should have the right to confront Customs. This, itself is precluded because Customs generally denies that repeated checking goes on or that the importer is on a "hit list", and it is near impossible to find the source of how the importer was placed on the list and how to get it off.

-- Inflexible Customs procedures which do not warn importers of forthcoming changes in practice and do not allow a grace period to adjust to the changes. A warning should be given before Customs changes procedures and an opportunity should be given to the importer to modify his submissions in light of the changes by Customs.

- In textiles, Customs laboratory have stringent tests which do not comport with commercial reality for determining chief value. Failure to accept commercial standards for variation in measuring the chief value often results in the need for new visas with the attendant time delay. For example, even one hundred percent silk pants can run into problems in definition since their pockets can be made from man-made fiber. It would make more sense for Customs to note the correct visa category for Commerce, but not disrupt trade by requiring a new visa. Chief weight under the new Harmonized System appears likely to be vulnerable to this problem, since the criteria have become even more nebulous.

- Customs lab tests take an extraordinary amount of time sometimes over one month, thereby paralyzing commercial shipments. Time constraints are most imperative unless visa category discrepancies can be handled separately and not subject released merchandise to notices of redelivery issued after the goods are sold since large liquidated damage claims would otherwise accrue.

- Customs often acts very petty when it comes to processing visas. For example, there was one case where imports were held up until a visa was modified to show square yard equivalents as opposed to square yards. It would have saved time if Customs made this change automatically and informed the importer of the change so as to prevent a repetition.

In summary, we agree with the Joint Industry Group when they state that "the Customs Service has strayed from the concepts of an agency dedicated to enforcing Customs law even-handedly and effectively, and at the same time, facilitating commerce in an impartial manner, free of trade policy orientation." (Statement of Kenneth A. Kumm on behalf of the Joint Industry Group/June 9, 1988).

Sincerely yours,

Steve Lande

Stephen Lande
President

C:\WP5\S\LEH.cu

STATEMENT OF FRED J. QUINTANA, CHAIRMAN MAQUILADORA COMMITTEE BORDER TRADE ALLIANCE

FOREWARD

The Border Trade Alliance was founded to act as a resource base and advocate of consensus border positions to government. It acts as a forum for its participants to discuss and advocate the interests of "the border". The BTA is a network of economic development corporations, chambers of commerce, trade associations, banks, industrial parks, service providers, manufacturers and state and local government agencies working to educate, build consensus and solve problems. Further information detailing the key priorities of the BTA will be found in EXHIBIT I.

The purpose of this briefing paper, is to present summaries of the Border Trade Alliance's position regarding U.S. Customs and Immigration and Naturalization Service issues that are impacting international commerce and tourism along the U.S./Mexico border region and which are vital components of the Area's potential for economic growth and diversification and survival.

The Border Trade Alliance acknowledges the contributions of its members from Brownsville, Texas to San Diego, California in the preparation of these materials and the continuing support and cooperation we have had from local representatives in all Ports of the U.S. Customs and Immigration and Naturalization Service.

PORT OF ENTRY MANAGEMENT ISSUES

1. The Border Trade Alliance strongly declares the need to conduct a Management Study at the Congressional level to determine the effectiveness of the present Port of Entry organizations at all points of the U.S./Mexican border, especially as this organization pertains to the operational supervision on a day to day basis of all forms of people and commercial and industrial vehicle crossings.

PRESENT STATUS: The Border Trade Alliance, through its member resources, has ascertained that the present conditions exist at all points along the U.S./Mexican border:

A. Shift Supervision Problems. The lack of a discernable policy or procedure which is binding on both the Immigration Inspectors and the Customs Officers stationed at the bridges cannot be overemphasized. Furthermore, supervisory authority from one branch to the other is non-existant. We have had consistent reports from all Port areas that INS and Customs personnel sometimes don't even speak to each other officially.

B. Staffing Problems. Even though more positions have been allocated and budgeted, vehicle lanes continue to be closed during rush traffic hours. There have been consistent reports of lanes closed during all hours of the day, while inspection personnel, be they INS or Customs personnel, are huddled in groups, usually at the secondary inspection stations.

C. Lack of Uniform Inspection Procedures. This is one of the most common complaints which is attributed to traffic congestion. Inspectors consistently perform extensive questioning and search at the primary stations with no apparent concern that traffic is backed up, while secondary stations are empty, except for the huddled groups mentioned in B above.

D. Attrition and apparent low morale of Inspection Personnel. There are continuing reports of a high attrition rate in INS and Customs personnel manning the Ports. Training takes time and replacing personnel constantly takes its toll in less than effective implementation of checking and search procedures.

2. **The Border Trade Alliance strongly believes that there is a pressing need to develop some form of centralized management organization to coordinate all U.S. service activities pertaining to Port of Entry Issues such as People and commercial and industrial vehicle crossings.**

PRESENT STATUS: Some form of centralized management authority to direct the activities of the inspection personnel manning the traffic lanes must be considered. Presently, USDA personnel, INS personnel, Customs personnel, and occasionally Border Patrol and other agencies man these very critical stations. However, none has the authority, nor do the individual supervisors of each particular group, to tell a member of the other service agency what to do. Citizens, and the business and industrial community are the recipients of over four distinct agencies' policies and procedures. No one supervisor has control of a particular situation and many times the inter-agency squabbles which result only delay the movement of people and vehicles. A negative by-product of this "out of control" hybrid situation which further compounds the waiting in line problem, is that traffic lanes which should be moving vehicles are frequently not staffed because one of the agencies cries "wolf" by saying that "it's not my turn". By this time a frustrated vehicle operator reaches a primary inspection station and is subject to the whims of an inspector who only sees "one car at a time", however, if the vehicle operator even appears to be "spouting off", he is immediately sent to a secondary inspection station where the huddled group of inspectors proceed to strip his vehicle. This is an intolerable situation all along the U.S./Mexican border from Brownsville, Texas to San Diego, California which cries for a solution.

RECOMMENDATIONS:

The Border Trade Alliance and all border communities strongly request and suggest that The U.S. Customs Service be selected as the centralized management organization to coordinate all U.S. service activities dealing with personnel and vehicle crossings of all types.

The Customs Service has played a leading role all along the border in the improvement of communications with local communities. They have also displayed the greatest inclination to take the leading role in providing some form of centralized management organization, so that the hybrid nature of having to deal with so many different agencies can be simplified. U.S. Customs has already taken an agressive stance in past improvements and activities such as Line Release and in the improvements to their Import lots to better facilitate commercial flow. Furthermore, they have committed to increasing staff in critical assignment areas, product selectivity is being implemented to provide priority handling. They have also had several meetings with Mexican counterparts to facilitate importations.

3. The Border Trade Alliance maintains that there is a need to develop a mechanism for GSA to implement local community input into all port of entry projects at all points along the U.S./Mexican border.

PRESENT STATUS: At the present time, there is no organized mechanism which provides a local community the opportunity to make constructive inputs to any port of entry project until such project is already underway at which time it is usually too late. The Brownsville Importers Committee mentioned earlier would provide a good reference point for GSA project cooperation. This Committee form could easily be adapted by other communities along the border.

E. Lack of long range planning with consideration given to local community needs, including communications with INS and U.S. Customs. The Border Area is growing by leaps and bounds. This includes normal population growth, the influx of legal and illegal immigrants, the explosive and continuing growth of the in-bond or Maquiladora industry, plus other factors. The long range planning goals of the U.S. Government agencies are not being communicated effectively, in some cases not at all, to local communities along the U.S./Mexican border. Regardless of mandates issued from Washington, local INS and Customs Officers are generally insensitive to demands from local communities that they be a part of the decision making process which affects them directly. The attitude generally taken, and generally reported, is that whatever the U.S. Government decides to do is the best thing for all concerned. This situation does not take into consideration the special needs of local border communities, the fact that many times the decision maker has no local orientation, but lately most of all, that drug interdiction takes precedence, regardless of the overall impact, positive or negative, on the local community concerned. A good example of lack of follow-up on what might have been a good plan follows. A project is submitted, analyzed, approved, budgeted and implemented by Customs or INS. Enter GSA to implement the plan...exit INS or Customs as if they no longer have an interest. This is not the way to run a business!

RECOMMENDATIONS:

A. Written policies, taking into consideration the hybrid nature of conducting inspection procedures along the U.S./Mexican border. One supervisory authority over the primary and secondary areas is also needed. A Management Study would provide the mechanics for doing all of the above effectively.

B. Most problems related to closed vehicle lanes can be traced to local management decision making. Even though some staffing shortages may exist, our reports indicate that a Congressional Management Study would reveal the shortcomings mentioned above and provide a reasonable solution.

C. The lack of uniform inspection procedures is a discipline problem with the various agencies involved. Furthermore, it indicates that proper training is not being given, that common sense is not a factor, and that indiviudal "Maverickism" on the part of many inspectors is prevalent. We feel strongly that a Management Study would provide solutions so that the various agencies could work together better and provide effective service to the local citizens and to the business and industrial community.

D. The Border Trade Alliance suggests that a Management Study could pinpoint the problems pertaining to attrition and low morale of Inspection Personnel, and provide various alternatives for their solution.

E. Community involvement in long range planning, in conjunction with Customs, INS, or GSA, or whatever other agency is involved is an indispensable part of the solution of this problem. The Border Trade Alliance has been instrumental in promoting inter-governmental meetings such as the ones between U.S. and Mexican Customs during the past two years. A good example of Community/Governmental cooperation is the Brownsville Importers Committee in Brownsville, Texas. This committee meets once a month and is chaired by the local U.S. Customs Port Director. The committee members include local bankers, brokers, Chamber of Commerce & Industrial Development personnel, the local maquiladora association, the Port of Brownsville and others. Communications have improved, there is an effective exchange of ideas based on mutual respect, and solutions to common problems affecting the community are being seen.

RECOMMENDATIONS:

The mechanism recommended by the Border Trade Alliance is predicated on three factors: 1) GSA is required by the language in the 1988 and 1989 appropriations to involve local communities in the port of entry planning process; 2) although the appropriation period may be for three years only, the actual expenditures of funds and planning of projects may involve three or more years; and 3) U.S. Customs has formed committees in certain local communities which advise the agency on port operations(Brownsville, Texas). These committees have been successfully used by the BTA to obtain project recommendations from those communities.

The objective of the BTA proposal is to assure local community input into the planning of port of entry projects. Local involvement is critical because the ports are the socio-economic life's blood of these communities. If the port represents a barrier to trade, the community's economic development potential is restricted. The BTA, therefore, recommends the local communities participate with local federal agencies in the initial identification and articulation of project proposals to be submitted to GSA.

The BTA mechanism would be for GSA to adopt the following: 1) Request the U.S. Customs Commissioner to instruct local customs directors to form Customs Committees which would advise the service on operations and planning of port facilities; 2) The local committees would include representation from, but not be restricted to, representatives from:

Private Industry

Border Trade Alliance
Customhouse Brokers Associations
Maquiladora Associations
Chamber of Commerce
Industrial Development Corps.

Public

City Government
County Government
Mexican Aduana(Customs)

3) GSA requests for projects, modifications of plans and approval of projects would be originated with these committees;
4) GSA would tabulate the project information and submit a preliminary report to the Senate Appropriations Committee and the BTA for review and comment;
5) Representatives from the BTA, GSA and the Senate Appropriations Committee would meet to review the final preliminary report prior to Senate Appropriations Committee markup.

4. The Border Trade Alliance believes that there are additional improvements and activities which are still needed to be made by U.S. Customs along the Southern Border.

A significant lack of uniformity on procedures, communications, and requirements is experienced along the Southern border from district to district and port to port. Examples of these inconsistencies are found with In-Bond processing procedures, country of origin marking procedures and requirements, and access to Import Specialists and other key Customs staff. **A suggested resolution to this situation would be to place the entire Southern border in one region with the regional offices located centrally. This would allow for concentration on the unique operational needs of the Southern Border.

There is a need to incorporate direct computer communications between Customs and Customs Brokers at the local network level to expedite the retrieval of release and entry information in a more timely manner without having to access the national Customs ABI computer through costly long distance.

U.S. Customs should provide the availability of adequate office space to Customs Brokers at the local Import Lot facilities to allow for expanded interfacing with operations and automation.

There is a strong need for the elimination of unnecessary documentation and paper flow that hampers efficient operations. Examples: Inward Cargo Manifest.

The "Special Regime for Mexico" program created to provide Mexico with the increased access it seeks to the U.S. market, and which incorporates the concept of future quota increases in some categories contingent upon Mexico's agreement to permit U.S. firms increased access to the Mexican market, must be made to work. A good example of how this special program is being implemented by the apparel industry is contained in EXHIBIT II. Further evidence that the program is working is the fact that one of the major objections to the Special Regime Program was that it was considered as "a potential source of textile fraud" which would flood the U.S. market with illegal imports. Contrary to this belief, Senior Customs managers have disclosed that fraud in this Program would be minimal. Thus far, most cases referred for investigation have been primarily for quantity discrepancies.

BTA PARTICIPANTS

The BTA is comprised of representatives from private and public sector entities

—Located in these border cities:

Arizona
  Bisbee
  Nogales
  Tucson
  Yuma

California
  Calexico
  San Diego

New Mexico
  Las Cruces
  Santa Teresa

Texas
  Brownsville
  Del Rio
  Eagle Pass
  El Paso
  Harlingen
  Laredo
  McAllen

—And located in these state Capitols:

Austin, TX.
Phoenix, AZ.
Sacramento, CA.
Santa Fe, N.M.

BTA STRUCTURE

The BTA has chosen to remain an alliance that acts as a resource base and advocate of consensus border positions to government. It will continue to rely heavily on the strengths of existing organizations at the local, regional and national levels, as well as on the good faith of its participants and representatives, their contacts and resources.

As a dynamic network the BTA provides unique combinations of strategy, structure and administrative processes. All BTA participants and representatives act on a volunteer basis, either individually or on behalf of a particular organization. No dues or any other organizational monies are collected, no professional fees are paid, and no political contributions are made. All programs are organized by a sponsoring entity on a cost return basis, and all administrative functions are voluntary.

The BTA is truly a different forum where all administrative and policy functions are accomplished by the border participants and representatives themselves.

EXHIBIT I

COMMENTS ON THE BTA

"Most business organizations or trade groups are really special interest lobbies. They focus narrowly on a few trade issues, and they worry more about tax breaks and government favors than professional achievement and responsibility. The Border Trade Alliance is different. The term 'trade group' just does not describe it, because the BTA is really concerned with crafting public policy. It is unrelenting in keeping its eye on the 'big picture.'"

Congressman Jim Kolbe of Arizona.

"The Border Trade Alliance plays a crucial role in communicating the important border issues to Washington policymakers. Burgeoning growth in U.S.-Mexico border activities, and its related problems, require a coordinated response from government and business. The Border Trade Alliance greatly facilitates this effort."

Congressman Bill Lowery of California.

The Border Trade Alliance
℅ San Diego Economic Development Corp.
701 "B" Street, Suite 1850
San Diego, CA 92101

Tel. (619) 234-8484
Fax. (619) 234-1935

BTA

BORDER TRADE ALLIANCE

THE BORDER TRADE ALLIANCE

The Border Trade Alliance is precisely what its name suggests—a grass roots alliance of United States/Mexico border organizations. It was founded in 1986 to act as a forum for its participants to discuss and advocate the interests of "the border." Operating as a network of economic development corporations, chambers of commerce, trade associations, banks, industrial parks, service providers, manufacturers and state and local government agencies, it works to educate, build consensus and solve problems.

BTA participants include representatives from the United States border communities and the four border states. Its policy objectives include the improvement of the means of commerce between the United States and Mexico, the development of necessary resources for border economic growth, and the advocacy of private and public sector border interests in the regulatory and legislative process.

Key Priorities

- *Education*. The BTA representatives act as a clearinghouse for a wide range of border related information.
- *Linkages*. The BTA works to link principal, private and public sector individuals whose actions affect the border.
- *Issues and Strategies*. The BTA conducts quarterly planning meetings that focus on border concerns and the implementation of BTA objectives.
- *Policy Recommendations*. The BTA works with both United States and Mexican government officials in developing necessary border policies.
- *Strategic Planning*. The BTA representatives are cooperating in putting together the elements of a long range border-wide planning mechanism.

The BTA has become a valuable resource for policymakers on both sides of the border on a number of specific policy issues.

ISSUES OF CONCERN

United States/Mexico Trade

The BTA works to develop trade between the United States and Mexico. With Mexico's entry into the GATT and the completion of the Bilateral Framework Agreement, trade relations can be rapidly improved in a number of areas. These include the transfer of technology and intellectual property, the manufacture and sale of electronic products, automotive components, agricultural commodities, steel products, textile products and the further development of cross-border-service industries.

Customs Policies, Procedures and Facilities

Due to the increased volume of trade, both in imports/exports and in-bond manufacturing, there is a pressing need for streamlined customs policies and procedures which facilitate trade yet allow for necessary narcotics enforcement.

The BTA is working with the Customs Services of both the United States and Mexico in an effort to improve communications, increase staffing, and enlarge commercial inspection facilities. Its representatives are also assisting in implementing new procedures such as line release, high security trailer sealing and paperless entry systems.

In-Bond Industry

With many hundreds of United States owned plants in northern Mexico and the border region relying heavily on in-bond manufactured components for production, the continued unimpeded operation of the maquiladora industry is critical to the economic future of the border. The BTA is working with policymakers in both countries to provide background research and materials that allow fully informed decision making to take place regarding this important industry.

Transportation

The BTA is working closely with private and public transportation specialists in both countries to make regulatory changes that would assist rather than impede commercial traffic. Its representatives have recommended specific legislative changes to the Congress and have provided testimony in a number of hearings on this issue.

Health and Environment

The border has very special health and environmental concerns that are not being fully addressed. The BTA has provided substantial input into administrative and legislative remedies for these concerns. Its representatives have also commenced educational efforts to make the entire border region fully aware of the necessity for action.

BTA 1988 CONFERENCES/ PROGRAMS

First Quarter—Mexico City, March

The Mexico 88 Conference was structured as an educational forum for BTA participants to obtain in-depth understanding in a number of key areas. The program focused on Mexico's Solidarity Pact, economic development and the role of foreign investment, trade agreements and policies, the International Trade Commission's TSUS Item 807 maquiladora study, the Mexican political process in a transition year, and customs facilities and procedures.

Second Quarter—Washington, D.C., May

The May Washington Conference was structured to provide a full review of the Administration and Congressional agenda for the border and Mexico. The program focused on bi-national relations, the specific Congressional proposals on border and Mexico issues, appropriations for the southern border ports of entry, United States/Mexico trade policy, the United States/ Mexico Framework and Textile Agreements, the ongoing Department of Labor Study on the maquiladora industry, and United States/Mexico customs policies and reforms.

Third Quarter—Laredo, Tx., Monterrey, Mexico, July

The July Laredo/Monterrey Conference will focus on developments in the maquiladora industry and on the border environment. It will also constitute the 1989 planning meeting for the BTA.

Fourth Quarter—Washington, D.C., October

The October Washington, D.C. Conference will focus on the concluding portions of the 1988 Congressional agenda and representatives will discuss those policy issues that should be considered by the next Administration and Congress.

SPECIAL REGIME FOR MEXICO

In response to the increased and continued demand of the apparel industry to integrate their systems and files to be ready to participate in the Special Access Program TSUS Item 807.0010 (HS Item 9802.00.8010) also known as the "Special Regime Program", the El Paso Brokers Association has compiled forms affidavits and comprehensive step-by-step procedures for your firm's implementation.

Although we are all aware of the rules for participation in the Special Regime Program, not everyone is at ease with the exact information and forms that will be required from them; therefore we will give you complete instructions which will enable you to complete an export/import documentation package.

In order that there be uniformity, thereby cutting the processing time to a manageable 24-hour limit instead of the proposed 48-hours, we in coordination with the El Paso Customs District Office have standardized all the attachments that must accompany the ITA-370P form in order that the documentation you present be quickly and easily processed into custom's systems and thus minimize bottle-neck traffic at the international border. From a practical viewpoint, this will eliminate the tedious and time-consuming need for the port to familiarize themselves with each firm's way of filling out the ITA-370P forms according to their interpretation of the rules. This procedures manual has been prepared with that in mind and the high hopes of simplifying the whole process. We understand that the rules and regulations set forth by the Committee for the Implementation of Textile Agreements (CITA) are complex, therefore we are recommending that your firm use these guidelines and forms which we believe will aid in prompt and timely processing of your ITA-370P package and consequently, your shipments.

On February 19, 1988, the textile agreement signed between the United States and Mexico promised to simultaneously increase Mexico's access into the U.S. market and ensure U.S. textile and apparel firms a substantial share in that market. The Special Regime Program created under this new agreement retains the highest levels for textile products assembled from U.S. formed and cut fabrics. Unlike the Carribbean Basin Initiative (CBI), the goals of the Special Regime Program are rather limited. It provides Mexico with the increased access it seeks to the U.S. market but not at the expense of U.S. textile and apparel firms. The agreement also incorporates the concept of future quota increases in some categories contingent upon Mexico's agreement to permit U.S. firms increased access to the Mexican market. The Special Regime does not utilize the CBI's two-tier quota system, instead a category is subject to a specific limit (SL) and within each specific limit there is a sub-limit for products which are not made from U.S. formed and cut fabrics. All Special Regime products are subject to import controls and are therefore counted against its applicable quota limits. This means that while Mexico could completely fill a specific limit with products made from U.S. formed and cut fabrics, in no event can it ship more than the prescribed percentage of that specific limit in products which are not made from U.S. formed and cut fabrics. The Special Regime program has established under the agreement, a six percent annual increase of the specific limit (SL) type quota which will be provided during the four year term of this new textile agreement. The distribution of the "SLs" under the Special Regime are carried out in the visa system. All Mexican products covered by the agreement will receive a regular round stamp on the original invoice whether or not the products are made from U.S. formed and cut fabrics. The United States government will be able to determine which Mexican assembled products are from U.S. formed fabrics by the visa numbers issued by the Mexican government. The visa number will be in the standard nine digit/letter format which begins with one digit for the last digit of the calender year of export, followed by two characters for the alpha code (the code for Mexico being "MX"), followed by the digit 2, 4, 6, or 8 (even numbers designate special regime). Other shipments that do not come under Special Regime will have odd numbers after the country code (1, 3, 5, 7, or 9) and a five numeric serial number identifying the shipment (i.e., 8 which is for 1988, MX for Mexico, 2 or even number identifying it as Special Regime or 3 or odd number identifying it as regular, followed by five numbers, such as 8 MX 2 12345 or 8MX212345 Special Regime - 8MX312345 Regular visa).

EXHIBIT II page 1

Under the terms of this textile agreement, several trade sensitive categories were given increased access quota levels, provided they used U.S. formed and cut fabrics only. This would differentiate the original 807.00 program quotas of Mexican products derived from foreign fabric and 807.0010 program quotas of Mexican products derived wholly from U.S. formed fabric, with the exception of findings, trimmings and elastic strips of less than one inch width, not exceeding 25% of the cost of the components of the assembled product. For your information, the definition of elastic strips is: the foreign origin exception for elastic strips was intended to be limited to elastic strips for use as brassiere straps and not to include elastic fabrics such as those used in waistbands. Consequently, effective since October 1, 1987, the foreign origin exception for elastic strips is clarified as limited to narrow elastic fabric less than one inch in width used in the production of brassieres only.

The rules of interpretation of U.S. formed fabrics are: any fabric that is woven or knitted in the U.S. from domestic or foreign yarns is considered U.S. formed. Greige goods imported into the United States and finished in the U.S. are not considered to qualify under the Special Regime Program because the fabric is considered foreign formed.

Linings, pocketings, interlinings, fusibles, felts and any other major trim items fall under the fabric requirements and not the trimmings which may contain up to 25 percent foreign value. Such trimmings and/or findings are comprised of thread, hook and eyes, snaps, buttons, elastic strips, zippers and labels.

We cannot overempahsize how crucial it is that your firm be familiar with all the requirements necessary to participate in the Special Regime Program, which will be discussed throughout this manual. We need to point out that falsification of any of the affidavits or information used will subject your firm to criminal and civil penalties under 18 USC 1001 and 19 USC 1592 and can also preclude your firm from future participation in the Special Regime Program.

One of the major objections to the Special Regime Program was that it was considered "as a potential source of textile fraud" and would flood the U.S. market with illegal imports. Contrary to this belief, senior Customs managers have disclosed that fraud in this Program would be minimal. Most cases referred for investigation have been primarily for quantity discrepancies. Thus, in spite of skepticism, there is minimal evidence that the Special Regime Program will result in widespread fraudulent activity.

CATEGORIES SUBJECT TO THE SPECIAL REGIME:

335
338/339/638/639
340/640
342/642
347/348
349/649
351/651
352/652
359-C (Coveralls and Overalls)
369-B (Handbags and Luggage)
369-U (Shoe Uppers)
633
634
647/648
659-C (Coveralls and Overalls)
659-S (Swimwear)
666

EXHIBIT II page 2

BROWNSVILLE IMPORTERS COMMITTEE

FERNANDO MACIAS, CHAIRMAN

MEMBER NAME	COMPANY/BUSINESS AFFILIATION
JIM EBERSOLE	DIRECTOR, INDUSTRIAL DEVELOPMENT, B.E.D.C.
FRED QUINTANA	NATIONAL DELEGATE, MATAMOROS MAQUILADORA ASSOCIATION
HASKEL KNIGHT	PRESIDENT, MATAMOROS MAQUILADORA ASSOCIATION
FERNANDO MACIAS	PORT DIRECTOR, BROWNSVILLE, TEXAS
JIM BEAMAN	DIRECTOR OF TRADE DEVELOPMENT, BROWNSVILLE NAVIGATION DISTRICT
LUIS CISNEROS	CUSTOMS BROKER
AL ROSER	CUSTOMS BROKER
PHIL COWEN	CUSTOMS BROKER
YGNACIO GARZA	MAYOR, CITY OF BROWNSVILLE
D.J. LERMA	CAMERON COUNTY JUDGE
STEVE FITZGIBBONS	CITY MANAGER, CITY OF BROWNSVILLE
DON ADAMS	DON ADAMS, PAST PRESIDENT, MATAMOROS MAQUILADORA ASSOCIATION
DIONISIO GALVAN	MANAGER, GATEWAY BRIDGE

BORDER TRADE ALLIANCE - BROWNSVILLE DELEGATION

JAMES A. BEAMAN	CO-CHAIRMAN; BROWNSVILLE NAVIGATION DISTRICT DIRECTOR OF TRADE DEVELOPMENT
JIM EBERSOLE	CO-CHAIRMAN; DIRECTOR, INDUSTRIAL DEVELOPMENT BROWNSVILLE ECONOMIC DEVELOPMENT COUNCIL
LUIS CISNEROS	CUSTOM BROKER
IRV DOWNING	VICE-PRESIDENT, TEXAS COMMERCE BANK
GENE GIBBS	CEO MBANK-BROWNSVILLE
MIKE HALE	DIRECTOR, ECONOMIC DEVELOPMENT, BROWNSVILLE ECONOMIC DEVELOPMENT COUNCIL
FRED QUINTANA	MAQUILA MANAGEMENT SERVICES (OWNER), NATIONAL DELEGATE-MAQUILADORA ASSOCIATION
IRL SCHLEGEL	ACERO INTERNATIONAL (OWNER)

NATIONAL CUSTOMS BROKERS & FORWARDERS ASSOCIATION OF AMERICA, INC.

Comments of

Thompson W. Anastasi, Chairman
ABI Committee

Back in 1970, some Customs brokers were beginning to provide automated data to Customs at the district level, for mutual benefit. This grew substantially, particularly on the Northern border. By 1983, the association felt all brokers should be able to participate in automated procedures. So, a committee was formed with Customs to develope an automated broker interface system.

By last August, 533 entry filers, mostly customs brokers, were on ABI. They handle 62% of the entry summaries presented to Customs.

ABI has three major features:

The first involves the release of goods. Before, or when, articles arrive, the broker electronically transmits the required data to Customs. Customs decides which articles will be examined and the type of inspection to be made.

The second involves the customs entry summary. After release of the articles, the broker files an entry summary with Customs and pays any required duty. ABI sends this data electronically to Customs headquarters. There, it is edited and some entry summaries are selected for further review.

The third involves financial data and payment of duty and fees. Under ABI, all financial and accounting is done electronically, bypassing district cashiers. ABI provides for a single check per entry payment and, better yet, batch payment with one check. And, my company, C.J. Tower, a subsidiary of McGraw-Hill, is already testing payment through electronic fund transfers with the Mellon Bank.

The most important advantage of ABI to Customs is that it receives the required data electronically for about five million broker entries absolutely free.

Until ABI, Customs captured only a limited amount of this vital data. The Department of Commerce also needs it for statistical purposes and now receives it through ABI.

In short, ABI has helped everyone.

That is why our industry is puzzled by recent Customs initiatives to have large importers send shipping invoice data, entry and entry summary data directly -- by-passing the traditional broker route.

Customs has endorsed EDIFACT and is testing it with three large importers.

We don't understand that for several reasons.

First, we have been working cooperatively with Customs to achieve a common goal. Both brokers and Customs have spend enormous amounts of time and money developing ABI. Through electronics, we are close to having a totally paperless environment.

Now, Customs wants to eliminate the remaining paper invoice through direct shipper transmissions via EDIFACT. While we think EDIFACT is a growing international standard, and endorse its future use, we question why Customs did not ask our industry to provide invoice date electronically. Instead, they turned to the shippers.

Since we receive invoice data electronically from many shippers and Customs knows it, why are they leaving an exceptionally good system? One that electronically provides Customs with free value added data? It just doesn't make sense.

We believe the country's and Customs' best interests are served if we remain a healthy and growing industry. Our role is vital in expediting rapidly expanding global trade.

Customs brokerage and freight forwarding are our livelihood. Imports and exports command our complete attention. Without our services, our clients would have a tough time in the highly complex international trading environment.

And, wouldn't it be easier for Customs to interface with a thousand brokers rather than literally millions of shippers and importers?

Therefore, we believe Customs should return to helping fine-tune the excellent ABI systems we have developed together. And then we should work together to develop future programs to provide electronic invoice data. Your assistance and encouragement of Customs to work with us would be deeply appreciated. Together, we can make a substantial contribution to improving the procedures and documents required to facilitate international trade.

Thank you.

Comments of

William Ansley, Chairman
EDI Committee

You have read Tom Anastasi's comments regarding the cooperation between Customs Brokers and Customs in the development of the ABI System. He has given a concise overview of the system, how it works, and what it has achieved. A major reason that it works is because of the cooperation that has been prevalent in its development. But what is ABI? Simply put, it could be described as the electronic interchange of data between Customs and the importing community, primarily Customs brokers. EDI can be defined as the application to application exchange of inter-company and intra-company information between two parties in a defined standard format. Customs brokers and Customs have developed a system proprietary to Customs for this interchange. EDI embraces the concept that there are many common messages (formatted records) that are commonly exchanged in the business world today. The possibility to transfer the information from computer to computer is a reality that happens everyday. Examples of these commonly interchanged messages are delivery orders, bills of lading, invoices, purchase orders, order acknowledgments, and many more.

The major concept of EDI is that a standard for the interchange of these messages be developed so that all parties may participate readily in the data transfer process. EDI thus becomes expressed in capital letters signifying the concept of a universal standard. But, is there? To date the answer would have to be, no; however, this is rapidly changing. The American National Standards Institute or ANSI X.12 has developed standards for generic commercial documents that are rapidly becoming accepted throughout North America. TDCC EDIA has developed standards for particular industries such as the rail, motor, and ocean freight industries. These standards are being modified and adopted by more parties each day. But this is not enough, a world standard is being promoted. It is called EDIFACT. EDIFACT stands for Electronic Data Interchange for Administration, Commerce and Transport. To date there is only one proposed EDIFACT message and that is a commercial invoice. This message has been ratified by the U.N..

U.S. Customs has endorsed the standard of EDIFACT and, in fact, has a test program underway with three major companies. This gives attention to the standard and has attracted much debate on its merits. There are several factors to be considered before Customs proceeds heavily into EDIFACT.

1) Customs has already developed a proprietary standard for communication of the majority of the data that it needs to perform its mission. Customs brokers provide 97% of all entry data Customs receives and 62% of that data is received in this proprietary standard (ABI). Based on these figures, and the ABI percentage grows every day, there is little market for Customs use of EDIFACT, unless current methods are converted. To encourage conversion would be a waste of efforts and unnecessary expense to Customs and the community.

2) Customs own data processing people acknowledge that though EDIFACT may be a future standard for international documentation, it is not as efficient as their own proprietary software (ABI). Estimates of 30% additional processing required have been given.

3) EDIFACT standards take a long time to be developed and adopted. Customs most ambitious schedule does not call for ratification and acceptance of their proposed message format until Fall, 1989, and this may well slip.

4) If Customs position is to be an advocate and catalyst in the changes in the international trade community, they must take care that they do not become "architects of change" merely for change's sake. They must insure that changes they adopt and encourage are ones that will be embraced by the international community. To insure such requires that Customs proceed at a pace that may prompt needed changes that are beneficial and efficient for all parties involved in the international community, but not precipitate undesirable change.

5) There are many legal, regulatory, and administrative changes necessary to fully facilitate a paperless environment with Customs through EDI, EDIFACT, or ABI. These need to be adopted to accommodate the goals.

Our industry, led by NCBFAA, endorses this natural growth and progression to more modern and efficient business practices. Automation, paperless, non-intrusive, uniformity, and predictability are concepts that we embrace and wish to work with Customs to achieve. We are pragmatists, however, and realize there is much work ahead and many changes to transpire to achieve these goals. We have established our own EDI committee to work with Customs and other organizations to achieve our common goals of modernization. We recognize the achievements that together we have shared and do not see the need to abandon nor modify extensively the ABI program. Any future plans Customs has to adopt EDI and EDIFACT should incorporate their existing programs and modify and adapt them over a course of time. EDI and EDIFACT are still emerging and developing. They are very promising, in fact, exciting ideas. I believe that they will be incorporated in our every day transactions, but I also believe that, because of Customs progress and past enlightened vision, transactions with Customs will and should be developed slowly in this area of EDIFACT in light of the aforementioned reasons. We encourage you to direct and lead Customs in this manner.

Thank you.

Comments of

Abe Knipper, Chairman
Courier Task Force

The couriers have evolved as a necessary adjunct to the movement of documents, domestically and internationally. Because of the advent of the FAX, and other computer communications, the courier business has declined in that aspect and for that reason had to expand service into cargo.

It is not our intent to stop anyone from competing with the custom house broker, or the freight forwarder; however, it is hard for a small businessman, as the general custom house broker is, to compete with a mammoth like U.P.S., Federal Express, or DHL. It is impossible to compete if the U.S. Customs gives unfair additional advantage to those services, as against the smaller companies (the customs broker). The courier has expedited delivery. Manifest information is taken as correct; hardly any examination of actual documents is made before freight is moved; limited compliance with the rules of textiles, food and drug, and other agencies are made; documents are normally perused after the shipment has left; misdeclarations or no duties are paid on shipments where duties should be paid; no import specialist looks at sample shipments or textile shipments.

The results are that a custom house broker has trouble clearing a shipment in 24 hours, whereas the courier can clear 2,000 shipments in a matter of 2 hours. The U.S. Customs' retort is that couriers are supplying certain information and, for that reason, they can do it. We, as brokers, certainly can supply and are supplying the same information, but we are not treated in the same way.

I think that the level playing field that we have discussed with U.S. Customs should be the way to go. We should have the same abilities; we have spent proportionately more money than the couriers to get into business, including automation. We have made the automation system part and parcel of U.S. Customs and it is only on the basis of our experience and our efforts that the system is working right now.

How can the Customs Service treat the broker and the courier the same? One, if the courier does not have to go through an import specialist in order to clear a shipment of textiles, then neither should the broker; if a courier does not have to have a quota review, neither should the broker; if small shipments are not subject to food and drug, then neither should the broker.

It is not my belief that it is in the best interest of the U.S. Customs Service, the interdiction of drugs, or the protection of their revenue, to be so free and loose in the handling of cargo importations.

It is very difficult and almost impossible for importers to go on record indicating that they are getting shipments, without the payment of duty, and that is the reason why they are using the couriers. However, I have personally heard from the importers that the reason they are not giving samples shipments to me, but to so-called couriers, is simply because they go through like a greased pig through the Customs Service; whereas; mine are constantly inspected and it takes 2-3 days to clear a shipment. Let me not mislead anyone by indicating that the importers are crooks.....it is an unfortunate situation that the importer, in order to continue with his business, cannot afford 2-3 days to clear the shipment of samples, and will do anything unless it is completely illegal, and he knows that fact, to get his shipments, and that is the reason why the couriers are doing so. The U.S. Customs is indicating that the couriers will now have to be automated. Abe Knipper, as a broker, makes an individual entry for each importation; however, a courier can make one entry for 75 or 100 shipments, or even maybe more. It would be impossible to indicate all the information that U.S. Customs' computer requires in order to determine whether information is correct, and whether enough information is supplied to determine selectivity.

Obviously, the Customs Service is in a quandry because they claim that they do not have the personnel, while the number of shipments is increasing ...... but that is not an excuse for adhering to requirement. The constant retort of the brokers and this Association has been, "let us compete equally, let us have a level playing field, and we will survive. Let us not pander to the big boys to the detriment of the small".

STATEMENT OF UNITED PARCEL SERVICE CO.
BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON WAYS AND MEANS
OVERSIGHT SUBCOMMITTEE
ON THE
COMMERCIAL OPERATIONS OF THE
UNITED STATES CUSTOMS SERVICE

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United Parcel Service Co. ("UPS" or the "Company") wishes to thank the Subcommittee for providing us with this opportunity to present our views on the commercial operations of the United States Customs Service ("Customs" or the "Service"), particularly as they relate to express carrier operations. UPS wishes to note at this point that a statement on this topic has been submitted by the Air Freight Association, and will be submitted by the Air Courier Conference of America. The statements of these associations, to which UPS belongs, provide a general overview of the commercial operations environment in which UPS functions. Therefore, the statement which UPS is submitting on its own behalf will focus on issues of specific concern to the Company.

I. United Parcel Service Co.'s International Operations

UPS commenced its international air express delivery operations in 1985, between the United States and six European countries. The Company currently operates in 41 countries worldwide, on an essentially 24 hour a day basis, and provides expedited delivery service between all of its countries of operation.

UPS is committed to expanding its international operations to include service to virtually every country in the world. The demands of international business and commerce are reflected in the highly expedited, closed-loop, door-to-door delivery service which UPS's customers expect, and receive, from the Company. In order to meet these demands, UPS has expended extensive personnel and financial resources to develop leading-edge, state-of-the-art shipment processing technology, including electronic data transfer, electronic label scanning, and fully automated document and package processing for Customs purposes. In addition, UPS also maintains its own customs brokerage company, which is fully licensed by the Customs Service and staffed by trained Customs brokers.

UPS's international shipment processing technology not only assures highly expedited delivery service, but enables the Company to provide the Customs Service with the degree of information integrity, reliability, and advance availability which is necessary in order for the Service to maintain its stringent inspection and enforcement control standards for compliance purposes.

II. United Parcel Service Co.'s Automated Customs Commercial Clearance Procedures

UPS has developed every phase of its international operations with Custom's compliance needs in mind. From its initial decision to expand its operations into the international arena through the present, UPS has worked closely with the Customs Service in order to assure that all of Customs' statutory and regulatory requirements are met. UPS has developed its international shipment processing technology in such a way as to successfully meet the dual needs of its customers and the Customs Service, without sacrificing either quality of service or of compliance.

Because of these procedures, UPS has met Custom's compliance standards to an exceptionally high degree. UPS notes that the success of this effort is reflected in the recent McKinsey Report, which cites the express carrier industry as a primary example of the successful commercial automation of an industry in conjunction with the Customs Service's compliance requirements.

As examples of our automated international delivery system procedures, UPS cites the following:

° International Shipments Processing System

UPS has instituted its International Shipments Processing System ("ISPS"), which is designed to electronically provide shipment information to the Company's import operations in advance of all shipment arrivals. ISPS also contains a customhouse brokerage module designed to transfer this "pre-alert" information into formats which are used by Customs for clearance purposes.

° Automated Commercial System/Automated Broker Interface

UPS has complied fully with the Customs Service's Automated Commercial System and Automated Broker Interface ("ACS/ABI") electronic information processing system. UPS is currently working as a "test company" in conjunction with Customs in the implementation of the automated manifest system. UPS intends to ultimately move to fully "paperless entry" processing on all international shipments.

° Bar Coding

Early on, as part of its implementation of the ISPS system, UPS instituted the use of electronic readable "bar coding" on all international shipments, in order to track and control shipments for Customs compliance and customer inquiry purposes. The bar code on each shipment contains that shipment's individual tracking number, which is scanned with an electronic "bar code reader". The information which is "read" is then fed into the ISPS, thereby providing UPS and Customs with instant, accurate information on the location of each shipment within the UPS international shipment system.

° Trained Personnel and Facilities Designed for Customs

UPS's own personnel are familiar with Customs requirements, and work in conjunction with the Customs Service's inspectors to ensure that compliance requirements are met. In addition, UPS has worked closely with the Customs Service in the design of the Company's facilities, in order to assure that these facilities meet the inspection and enforcement requirements of the Customs Service personnel.

UPS believes that, as its own operational procedures show, there is no reason why regulatory compliance requirements should conflict with, or impede, commercial operations in the international business environment. The success of UPS' own operations are an excellent example of the fact that potentially conflicting regulatory and commercial interests can work hand-in-hand to develop commercial operations, systems and technology which are mutually beneficial. Indeed, UPS has made this one of its primary goals -- to continue to maintain and develop operational procedures which will serve both the compliance needs of the Customs Service as well as the international commercial needs of the Company's customers.

III. Customs' Recognition of the Express Carrier Industry

UPS heartily supports the Customs Service's efforts to recognize express carriers as a separate and unique industry, and to implement regulatory procedures which are compatible with, and responsive to, their needs. In turn, these procedures are absolutely necessary in order for Customs to keep abreast of the rapid changes in, and expansion of, the international express delivery business. Anything less would be an impediment to both international commerce and its effective regulation.

This recognition is warranted based on the high degree of merchandise control and information accuracy which UPS is able to provide to the Customs Service as a result of the Company's automated, closed-loop, international shipment processing system. In fact, it should be noted that many foreign customs services, through their participation in the Customs Cooperation Council, are developing new and improved methods to properly process express carrier shipments, as well as to successfully interdict international traffic in drugs and other contraband. To a significant extent, the methods established by the U.S. Customs Service, in conjunction with express carriers such as UPS, will act as a model for the world.

The Company commends the Service for its continued efforts to develop and maintain regulatory programs which fairly and effectively balance the special operational and commercial needs of the express carrier industry and the customers it serves with Custom's own interests in revenue protection and enforcement. UPS believes that these efforts by the Customs Service are of tremendous benefit to the public interest, as they contribute to the overall facilitation of both domestic and international commerce.

Among the programs developed by the Customs Service which evidence this approach are the recently proposed Part 128 regulations, for the clearance of cargo carried by express consignment carriers. These regulations exemplify the recognition by Customs of express carriers as comprising a unique and distinct industry. Part 128 will maintain and enhance Customs' regulatory control of the express carrier industry as well as enhance the industry's ability to provide expedited delivery service to the international business community. UPS supports Part 128, and believes it is an example of the type of enlightened regulatory reform which best serves the dual interests of Customs and commerce.

In addition to Part 128, Custom's efforts to take into consideration the unique nature of the express carrier industry's business operations are reflected in the Service's recognition that, in order to provide highly expedited international delivery service, it is necessary for the shipper to contractually agree that the express carrier is to act as the consignee on all shipments carried. This procedure is necessary in order for UPS to provide its shippers with rapid Customs entry and clearance, and is fully warranted because, as noted earlier, the Company maintains its own licensed brokerage firm, thereby assuring that all Customs requirements are met.

When viewed as a whole, these proposed regulations represent a broad-based approach, which is both practical and innovative, for the regulation of the express carrier industry. The regulatory efforts on the part of the Customs Service are highly commendable, as they maximize the Customs Service's ability to protect the revenues and enforce the Customs laws, while minimizing any unnecessary restraints on commerce.

IV. United Parcel Service Co. Supports Further Statutory and Regulatory Changes

UPS believes that certain additional statutory and/or regulatory changes are necessary in order to build upon and further improve the current regulatory and commercial environment for the entry and clearance of international express shipments.

- The statutory maximum for low value items which are exempt from Customs entry requirements should be raised from the current $5 level to at least $100.* Such a change would be cost/benefit effective, as any revenues generated by such entries are far outweighed by the costs to Customs to process them, and the resources expended by Customs on such entry processing could be reallocated to interdiction, inspection, and control. In addition, this change would serve to bring the Customs Service's treatment of express carrier shipments into general parity with that of similar U.S. Postal Service shipments, which, according to a recent study by the consulting firm of Peat, Marwick & Mitchell, are generally accorded more favorable customs treatment than those of express carriers.
- The statutory maximum for informal entries, which is now $1000 and would be increased to the current statutory maximum of $1250 under the proposed Part 128 regulations, should be raised to at least $2000. Likewise, such a change would be cost/benefit effective for both Customs and the express carrier industry.

V. Conclusion

In conclusion, United Parcel Service Co. wishes to reiterate its appreciation for the commitment made by the Customs Service to modernize, streamline and automate its own commercial operations in order to keep pace with the rapid expansion of international commerce and technology. Further, UPS appreciates the Custom Service's recognition of, and responsiveness to, the unique nature and needs of the express carrier industry.

Clearly, this rapid expansion of international commerce, and the corresponding advances in technology, present a challenge to both the business community and the Customs Service. UPS has made a significant financial commitment to the use of technology in its international business operations, and believes that the Customs Service has made a like commitment to the use of technology in regulation. UPS believes that the evidence shows that the hard work and cooperative efforts of Customs and the express carrier industry are paying off, in the form of a regulatory environment in which the interests of compliance and commerce may be served simultaneously without sacrificing the standards of either one.

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* This $100 low value entry exemption level is arrived at as follows: Assuming an average duty rate of 5 percent for dutiable informal entries, an item valued at $100 would be subject to a $5 duty ($100 times 5 percent). Custom's fee to cover the cost of preparing simple mail entries is $5. Thus, for any item valued at less than $100, Customs would, at a 5 percent duty rate, actually collect less revenue than it spends to generate the entry.

In light of this, UPS reiterates that the Company, and other members of the express carrier industry, have not been the recipient of treatment which in any way derogates the enforcement responsibilities of the Customs Service. Express carriers have benefited fairly and justifiably from their commitment to develop internal, and external, international operating policies and procedures which comport with the Customs Service's own regulatory requirements. In closing, UPS cannot help but note that the type of treatment which the industry has received from Customs is equally available to any segment of the importing community that is willing to make a similar commitment to advanced commercial technology and regulatory cooperation.

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STATEMENT BY THE UNITED STATES APPAREL INDUSTRY COUNCIL

We would like to thank you, Congressman Pickle, for this opportunity to address the Oversight Subcommittee of the House Ways & Means Committee. We hope that the collective experience of our membership may help to provide a slightly different perspective into the issues which might be of interest to this committee.

First, what is the United States Apparel Industry Council? The council, which was formed in June of 1986, consists of some of the largest and best known apparel companies in the United States, including: Levi Strauss & Co.; Farah; Cluett-Peabody & Co.,; The Lee Company; Tropical Garment Manufacturing; Bend-n-Stretch; Salant; Colonial Corporation of America; Hanes Knit Products; Oxford Industries; Fashion Enterprise and Haggar Apparel.

The common thread which binds this association together, is that each member company assembles overseas at least some finished apparel products from piece parts cut in the United States. Thus, for example, all of the pieces necessary for a dress shirt (front and back panels, sleeves, collar, pockets etc.) would be cut from a bolt of fabric in the United States and then shipped overseas (Mexico, Jamaica etc.) where the parts are sewn together to complete the shirts.

The U.S. government has recognized the importance of these types of operations to the long-term geo-political interests of this country. This is true not only because of the positive economic effects both here and in the country of assembly, but also because of the linkage between the U.S. and the assembly country which this "shared production" creates. Based upon that recognition a number of specific programs have been implemented to encourage this "shared production".

These types of operations are the subject of special duty treatment under item 807.00, Tariff Schedules of the United States, which allows the value of the fabricated U.S. components to be deducted from the dutiable value of the finished article. In addition, for the countries covered by the Caribbean Basin Initiative, and providing certain conditions are met, special guaranteed quota access is available if the fabric was fully formed and cut in the United States. By recent agreement, such a program is also being implemented for Mexico.

For our member companies, this access to a less expensive workforce for the labor-intensive sewing aspect of apparel production allows one to effectively compete with inexpensive imports from the Far East while still maintaining a significant portion of the production capacity in the United States. For the countries where this assembly takes place, the program brings investment, jobs, and much needed foreign exchange.

Obviously, as companies deeply involved in world trade, both imports and exports, our members share many of the same concerns and problems which are being more specifically addressed by other witnesses. The delays in obtaining administrative rulings from Customs Headquarters, and the reduced dissemination of rulings which have been issued are especially difficult in a product area such as textiles with the frequent styling changes. The shifting positions of Customs on issues such as country of origin, and marking requirements also cause some difficulty. This is especially true when Customs field offices disagree even on simple questions as to where the label should be placed. All of these problems are magnified by the seeming desire of Customs to seize merchandise as the first step in every dispute. However, to avoid unnecessary repetition, we would like to focus on a few issues of particular interest to our members, which also appear to raise large questions.

The first is the Customs approach to the implementation of item 807.00, the statutory basis for the "shared production" program. Historically, the Customs Service has taken a very narrow view of the types of situations which qualify for this program, and has frequently disqualified a product because of some minor operation which occured either during the assembly process, or following it. This narrow approach has lead to a number of court challenges, and I think even Customs would admit, most of these have been won and have forced Customs to take a more commercially realistic approach. For example, Customs disallowed the assembly of a garment if buttonhole was cut during that process. The courts reversed that position finding it to be an "incidental" operation which was only commercially practical to perform during the assembly process.

This restrictive approach has only served to restrict the achievement of the economic and political goals of the program. Unfortunately, this narrow approach still prevails at Customs.

Denim jeans are obviously an important commercial product. As you no doubt have observed, consumer preferences have lead to a tremendous increase in the market for the "pre-washed" jean, which has a softer feel. As consumers have become more discriminating, some look for jeans with a more faded look, and the stone-washed jeans have also become popular. To achieve these "looks" a manufacture might add a little bleach to the wash cycle, or for stone-washing actually place pumice stones into the washer with the jeans. While Customs will allow such operations if detergent and/or fabric softner is added to the water, they disallow them if instead the manufacture uses a little bleach or the pumice stones. In another example, while Customs allows polyester garments to be pressed, which imparts the "permanent press" characteristics, they disallow an essentially similar process which does the same for certain cotton fabrics.

In our view these are distinctions without differences, a view shared by Trade Associations representing domestic textile and apparel manufactures. Despite this unusual unanimity of agreement, we are having difficulty with Customs and, in fact, are meeting with them again this afternoon.

A second problem area concerns the administrative burdens which the government has placed on the so-called "Special Access" program for apparel assembled in the Caribbean from U.S. fabric, and the even more restrictive approach being considered to implement a similar system with Mexico. One such problem is a new and special form which was developed. It does little more than duplicate pre-existing forms, while creating a costly burden for both importers and the government. Indeed, the confusion on the government's part resulted in the overall administration of the program being shifted from New Orleans to Miami. Since this form is basically duplicative, we do not believe that it has in anyway materially enhanced the enforcement capabilities of the government. In relation to the new Mexican agreement, current government plans would require all shipments to be through only specified Districts on the Southern border and require that outbound and inbound shipments be made through the same District. Implementation of these restrictions would create costly logistical problems for some companies.

We raise these issues, not only because they represent problems for our membership, but also because they reflect a larger issue. Obviously, the "807" program and the Special Access provisions for apparel assembled in the Caribbean area and Mexico, represent major trade policy initiatives of the United States with a range of economic and political goals. Questions as to how a policy is being implemented cannot be divorced from the policy itself. Thus, if this committee is interested in the effectiveness of our trade policies in relation to the Caribbean area and Mexico - then these and similar issues need to be reviewed.

To completely shift gears for a moment, I would like to bring to the Committee's attention the increasing impact on legitimate commercial shipments of the illicit narcotics trade and the governments efforts to halt that trade. The governments efforts to interdict drug shipments are apparently leading would be smugglers to expand their use of normal commercial shipments as a cover for their activity. Unfortunately the "807" or "twin plant" textile operations outlined above are concentrated in Central and South America and the Caribbean, areas which are primary source countries or transshipment points for these narcotics.

The drug trade affects our operations in a range of ways. First, as the Customs Service increases the intensity of its examination and inspection efforts, shipments are being delayed with increasing frequency. In todays competitive market-place, time is money and these delays increase both our costs and our level of customer dissatisfaction with late deliveries.

Second, if drugs are found the Customs Service has embarked on a program of issuing outrageous penalty demands against innocent third parties, even in situations where there is no evidence of involvement or culpability. This is a policy which seems more intent on securing headlines rather than on achieving meaningful results. Attached is a recent article from the Journal of Commerce (March 15, 1988) describing the problems of two shipping lines in this regard. If the article is accurate it appears that Evergreen merely picked-up and delivered a container which was already sealed shut and remained so through delivery. It is difficult to postulate what steps this vessel operator may have taken to avoid the issuance of the penalty. While this appears incredulous, it is becoming more common as Customs seeks to force Carriers to extraordinary efforts to detect drugs and then to issue an 8 to 9 figure penalty claim if these efforts fail. Such a policy greatly increases the real costs to the carrier of providing his service, it makes expansion of the transportation network less likely and as the article notes may well result in a curtailment of services. All of which hurts our competitive position, increases consumer costs, and hinders the efforts of these countries to build a legitimate economic base.

Customs has also began to issue these 8 to 9 figure penalty claims to importers, again even in situations where there is no evidence of involvement or culpability. The mere issuance of such a large claim, even if totally unfounded, can have very real economic consequences on a publicly held corporation, not to mention the time and cost to fight such a claim. These problems together have caused some of our members to consider retrenchment or withdrawal from some of their operations. Such a decision would benefit no one and would only serve to further entrench the dependence of the foreign country on the drug trade.

We and our member companies fully support efforts to eradicate the drug problem. Indeed some of our members are leaders in that effort. Consideration must be given, however, to the question as to whether some of the "tactics" currently being used are in fact counter-productive.

Our Association will be meeting with Customs officials tomorrow morning on this issue. From our perspective, the only course toward a meaningful solution of the drug problem in general and this smuggling problem in particular is to replace the current confrontational approach toward legitimate business with a cooperative effort.

We hope these comments have raised some thoughts that will be useful in your future deliberations. If our Association, or its members can provide any additional information, we would be pleased to do so.

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